(7) The Committee notes that the Stat party makes extradition contingent on the existence of an extradition treaty and that the Extradition Act allows for extradition of offenders from and to Commonwealth countries. The Committee is however concerned by the fact that the State party, when the State party receives a request for extradition from another State with which it has no extradition treaty, does not invoke the present Convention as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention (arts. 7, 8).

> **The State party should take appropriate legislative and administrative measures to ensure that the present Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention, when it receives a request for extradition from any other State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention.**

Obligation to investigate and right to complain

(8) The Committee notes with satisfaction that the Human Rights Commission is allowed to conduct prison and police cells inspections. However, it is concerned that it does not have sufficient financial and human resources to conduct such visits nor the power to take action against persons found guilty as it can only make recommendations to the competent authorities. The Committee also express concern about the frequent failure by the State party to implement the Commission's recommendations and that the Commission is not competent to initiate legal proceedings on behalf of complainants (art. 11).

> **The State party should provide the Human Rights Commission with sufficient financial and human resources and allow it to receive financial support without the prior agreement of the President. It should also reinforce the independence of the Commissioners, especially with regard to the appointment process, and enhance the enforcement power of the Commission. Additionally, the State party should ensure that the Commission is competent to initiate legal proceedings and that its recommendations are fully and promptly implemented by the authorities they are directed to.**

(9) While noting that the State party has begun the process of drafting a prosecution policy, the Committee is concerned that, despite the State party's commitment expressed seven years ago (A/57/44), no measures have been taken to remove the function of prosecution from the police to the Director of Public Prosecutions (art. 12).

> **The State party should ensure the prompt enactment of an adequate prosecution policy in order to ensure a fully independent complaint mechanism for victims of torture. In that regard, it should remove the function of prosecution from the police to the Director of Public Prosecution in order to guarantee suspect's rights in the administration of justice.**

(10) While noting that officers found guilty by the Police Public Complaints Authority (PPCA) have been charged with administrative sanctions, the Committee regrets the absence of prosecution of perpetrators of torture and cruel, inhuman or degrading treatment, as well as the lack of appropriate penalties for such perpetrators. The Committee is also concerned at the lack of appropriate compensation for victims of torture (arts. 4, 14).

> **The State party should ensure adequate prosecution of perpetrators of acts of torture and appropriate compensation, including full rehabilitation for victims of torture. In that regard the State party should include in its next periodic report, statistical information on the number of cases of torture brought to courts and on compensation received by victims.**

Fundamental safeguards

(11) The Committee notes with concern that the Police Service rely on the Judges' Rules, which are not enforceable, for guidance on the procedures to be followed by police officers in detaining and questioning suspects. The Committee also expresses concern that there are no formal rules ensuring the right to contact relatives, the right of access to a lawyer, including for children, and medical examination from the outset of the detention (arts. 2, 11).

The State party should consider to amend its Code of Criminal Procedure and take effective measures to ensure that fundamental legal safeguards for persons detained by police officers are respected, including the right to inform relatives, have access to counsel and independent medical assistance from the outset of the detention.

(12) The Committee, while welcoming the setting up of the Forensic Laboratory in Lusaka, regrets that only these police officers can efficiently investigate (art. 11).

The State party should establish forensic laboratories in all provincial centres and provide training in the use of such laboratories.

Administration of justice

(13) The Committee notes the efforts made by the State party to punish police and prisons' officers for torture, abuses or violations of human rights. It remains concerned, however, about the fact, acknowledged by the State party, that most people living in the State party are unaware of their rights and thus unable to present their allegations before appropriate authorities or tribunals (art. 13).

The State party should undertake awareness-raising campaigns in order to ensure that all persons in the State party are aware of their rights as envisaged in the article 13 of the Convention.

(14) While welcoming the fact that law enforcement personnel do not rely on confession statements unless other independent evidence has been obtained, the Committee notes with concern that there is no legislation or other measures to ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings (art. 15).

The State party should adopt all necessary legislative, judicial or administrative measures to ensure the strict application of article 15 of the Convention and should provide detailed information to the Committee on any cases where such evidence was excluded or used and on measures implemented.

Systematic review of detention facilities and living conditions in prisons

(15) The Committee welcomes the numerous administrative and other measures taken to improve the conditions of detention and the State party's commitment to continue these efforts. However, the Committee reiterates its concerns expressed in its previous concluding observations (A/57/44) about the severe overcrowding in detention facilities as well as at the still poor physical conditions prevailing in prisons and the lack of hygiene and adequate food. The Committee is also concerned at the use of a reduced diet as a form of punishment (art. 16).

The State party should take urgent measures to bring conditions in detention centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should allocate all material, human and budgetary resources necessary for this purpose and give priority to:

(a) Reducing overcrowding and the high number of prisoners in detention;

(b) Improving food provision for detainees;

(c) Speedily abolish the law and practice on reduced diet.

(16) The Committee, while welcoming the amendment of the Prisons Act of 2004 providing for the establishment of a Health Care Service within prisons which will enable the Prisons' Services to employ competent medical personnel to attend the health needs of inmates, is concerned at the prevalence of disease such as HIV/AIDS and tuberculosis and the high contamination rate of inmates and prisons' officers due to overcrowding as well as the lack of adequate health care (art. 16).

The State party should speed up the establishment of Health Care Services within prisons and the recruitment of medical personnel in order to bring conditions of detention in line with international standards.

(17) While welcoming the amendment of the Prisons Act of 2004 providing for the release of prisoners on parole including terminally ill prisoners, the Committee remains concerned at the fact that the prison authorities make in practice little use of this remedy (art. 16).

> **The State party should urge the competent prison authorities to use in practice all legal possibilities to release prisoners on parole by the Commissioner of Prisons on the recommendation of the Parole Board and to discharge from prison any terminally ill prisoner.**

(18) The Committee notes with concern that juveniles are often not held separately from adults, women from men, and pretrial detainees from convicted prisoners. The Committee is also concerned at the low legal age for criminal responsibility (eight years) (art. 16).

> **The State party should take urgent measures to ensure that accused persons are detained separately from convicted ones and that children and women are detained separately from adults and men respectively in all circumstances. The State party should rise the age of criminal responsibility to a more internationally acceptable age.**

(19) The Committee expresses concern at the conditions of detention of convicted prisoners on death row, which may amount to cruel, inhuman or degrading treatment in particular due to overcrowding and the excessive length of time on death row (art. 16).

> **The State party should consider taking measures to restrict the application of the death penalty and should adopt procedural reforms which include the possibility of measures of pardon. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.**

Violence perpetrated by law enforcement officials

(20) The Committee expresses its concern at information of law enforcement personnel inflicting torture and other cruel, inhuman or degrading treatment during criminal investigations in police station (arts. 1, 16).

> **The State party should ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, if appropriate brought to trial and if found responsible adequately punished.**

Protection of children from cruel, inhuman or degrading treatment

(21) While noting that the State party's legislation prohibits corporal punishment in schools, the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools and that corporal punishment is de facto widely practiced and accepted as a means of upbringing (art. 16).

> **The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools, ensure that legislation prohibiting corporal punishment is strictly enforced and undertake awareness-raising and educational campaigns to that effect.**

Violence against women

(22) The Committee acknowledges the State party's ongoing process of reviewing the Penal Code to prevent and punish gender-based violence as well as the National Action Plan on Gender Based Violence. However, the Committee notes with concern reports of widespread violence against women, particularly rape and violence in the family. The Committee is also concerned at the discrepancy between statutory and customary law as regards issues of gender-based violence (art. 16).

The State party should continue its efforts to prevent and punish gender-based violence and adopt all appropriate measures to prevent, combat and punish violence against women, in particular by speedily adopting the legislation underway against gender-based violence and by incorporating offences of family violence and marital rape in its Penal Code. The State party should ensure the priority of statutory law over customary law and practices and the right to appeal.

(23) The Committee notes the State party's efforts to ensure that female prisoners are supervised by female officers. However, the Committee is concerned at information of acts of sexual violence by law enforcement personnel, especially in rural area and regrets the low number of complaints and the absence of convictions in this regard.

The State party should continue its recruitment process of female officers and ensure that procedures are in place to monitor the behaviour of law enforcement officials. The State party should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should set up a rehabilitation and support system for victims of gender-based violence.

Training on the prohibition of torture

(24) While acknowledging the State party's efforts to provide human rights training to law enforcement officers including the police, the Committee remains concerned at (art. 10):

(a) The lack of training on the ways of prevention and prohibition of torture and cruel, inhuman and degrading treatment or punishment provided for law enforcement officials at all levels, including police officers, prison staff, judges as well as the military;

(b) The absence of training to detect signs of torture and ill-treatment for medical personnel; and

(c) The inadequacy of training materials available, notably on the conduct of interrogation rules.

The State party should continue human rights training with the objective of bringing about a change in attitudes and behaviour and include the prohibition of torture for all professionals enumerated in article 10 of the Convention at all levels. The State party should also ensure practical training for medical personnel to detect signs of torture and ill-treatment. The State party should provide adequate training materials focusing specifically on the prohibition of torture.

(25) The Committee notes with appreciation the State party's commitment to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.

The State party should consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.

(26) The Committee regrets that, despite the commitment expressed during the consideration of the initial report of Zambia in 2001, the State party has not yet made the declarations provided for in articles 21 and 22 of the Convention.

The State party should consider making the declarations provided for in articles 21 and 22 of the Convention.

(27) The Committee notes the current development of a central database by the Central Statistics Office; the State party should provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations under the Convention:

(a) Statistics on the reception capacity and population of each prison in Zambia, including data disaggregated by gender and age group (adults/children), and the number of pretrial detainees;

(b) Statistics on gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the related convictions of perpetrators and compensations provided to victims; and

(c) Statistics on cases of extradition, expulsion or return, including information on the handing over of detainees.

(28) The Committee invites the State party to ratify the United Nations human rights treaties and their Protocols to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention on the protection of All persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict and the optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child pornography.

(29) The State party is encouraged to disseminate widely the State party reports submitted by Zambia to the Committee and the Concluding observations and summary records, in appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4).

(31) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 11, 13, 15 and 20 above.

(32) The Committee requests the State party to submit its next periodic report, which will be considered as its third periodic report, by 30 June 2012.

IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May,

20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.[3] However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (http://www2.ohchr.org/english/bodies/cat/sessions.htm).

56. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have

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[3] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44).

not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

57. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

(a) The need for greater precision on the means by which police and other personnel instruct on and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer and family member;

(b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention, because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for such acts; and the importance of the protection of persons employed in such bodies;

(d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice statistics in ways that ensure adequate information as to personnel, agencies, or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse, and in particular information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections; the utility of permitting non-governmental organizations to conduct prison visits; and the utility of precautionary measures to protect investigators and official visitors from harassment or violence impeding their work;

(g) The need for information about specific professional police training programmes, with clear-cut instructions as to the prohibition against torture and practice in identifying the sequellae of torture; and for information about the conduct of medical examinations, including autopsies, by trained medical staff, especially whether they are informed of the need to document signs of torture including sexual violence and to ensure the preservation of evidence of torture;

(h) The need for evaluations and continuing assessments of whether a risk of torture or other ill-treatment results from official counter-terrorism measures;

(i) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, such as the intersection of race and/or ethnicity with ill-treatment and torture, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges, incidents of sexual violence, complaints about abuses within the military, etc.

58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2008

Thirtieth session (May 2003)

State party	Information due in	Information received	Action taken
Azerbaijan	May 2004	7 July 2004 CAT/C/CR/30/RESP/1	Request for further clarification
Cambodia	August 2003	Not received	Reminder
Moldova	August 2003	Not received	Reminder

Thirty-first session (November 2003)

State party	Information due in	Information received	Action taken
Cameroon	November 2004	Not received	Reminder
Colombia	November 2004	24 March 2006 CAT/C/COL/CO/3/Add.1	Request for further clarification
		17 October 2007 CAT/C/COL/CO/3/Add.2	Response under review
Latvia	November 2004	3 November 2004 CAT/C/CR/31/RESP/1	Request for further clarification
		14 May 2007 CAT/C/LVA/CO/1/Add.2	Response under review
Lithuania	November 2004	7 December 2004 CAT/C/CR/31/RESP/1	Request for further clarification
		25 October 2006 CAT/C/LTU/CO/1/Add.2	Response under review
Morocco	November 2004	22 November 2004 CAT/C/CR/31/2/Add.1	Request for further clarification
		31 July 2006 CAT/C/MAR/CO/3/Add.2	
		27 October 2006 CAT/C/MAR/CO/3/Add.3	Response under review
Yemen	November 2004	22 August 2005 CAT/C/CR/31/4/Add.1	Request for further clarification

Thirty-second session (May 2004)

State party	Information due in	Information received	Action taken
Bulgaria	May 2005	Not received	Reminder
Chile	May 2005	22 January 2007* CAT/C/38/CRP.4	Request for further clarification
Croatia	May 2005	12 July 2006 CAT/C/HRV/CO/3/Add.1	Request for further clarification
Czech Republic	May 2005	25 April 2005 CAT/C/CZE/CO/3/Add.1	Request for further clarification
		14 January 2008 CAT/C/CZE/CO/3/Add.2	Response under review
Germany	May 2005	4 August 2005 CAT/C/CR/32/7/RESP/1	Request for further clarification
Monaco	May 2005	30 March 2006 CAT/C/MCO/CO/4/Add.1	Request for further clarification
New Zealand	May 2005	9 June 2005 CAT/C/CR/32/4/RESP/1	
		19 December 2006 CAT/C/NZL/CO/3/Add.2	Request for further clarification

* Follow-up information received as part of the periodic report.

Thirty-third session (November 2004)

State party	Information due in	Information received	Action taken
Argentina	November 2005	2 February 2006 CAT/C/ARG/CO/4/Add.1	Request for further clarification
Greece	November 2005	14 March 2006 CAT/C/GRC/CO/4/Add.1	Request for clarification
United Kingdom of Great Britain and Northern Ireland	November 2005	14 March 2006 CAT/C/GBR/CO/4/Add.1	Response under review

Thirty-fourth session (May 2005)

State party	Information due in	Information received	Action taken
Albania	May 2006	15 August 2006 CAT/C/ALB/CO/1/Add.1	Response under review
Bahrain	May 2006	21 November 2006 CAT/C/BHR/CO/1/Add.1	Response under review
Canada	May 2006	2 June 2006 CAT/C/CAN/CO/4/Add.1	Response under review
Finland	May 2006	19 May 2006 CAT/C/FIN/CO/4/Add.1	Request for further clarification
Switzerland	May 2006	16 June 2005 CAT/C/CR/34/CHE/Add.1 15 May 2007 CAT/C/CHE/CO/4/Add.2	Response under review
Uganda	May 2006	Not received	Reminder

Thirty-fifth session (November 2005)

State party	Information due in	Information received	Action taken
Austria	November 2006	24 November 2006 CAT/C/AUT/CO/3/Add.1	Response under review
Bosnia and Herzegovina	November 2006	1 February 2006 CAT/C/BIH/CO/1/Add.1 6 May 2007 CAT/C/BIH/CO/1/Add.2	Request for further clarification
Democratic Republic of the Congo	November 2006	Not received	Reminder
Ecuador	November 2006	20 November 2006 CAT/C/ECU/CO/3/Add.1	Response under review
France	November 2006	13 February 2007 CAT/C/FRA/CO/3/Add.1	Response under review
Nepal	November 2006	1 June 2007 CAT/C/NPL/CO/2/Add.1	Request for further clarification
Sri Lanka	November 2006	22 November 2006 CAT/C/LKA/CO/2/Add.1	Request for further clarification

Thirty-sixth session (May 2006)

State party	Information due in	Information received	Action taken
Georgia	May 2007	31 May 2007 CAT/C/GEO/CO/3/Add.1	Response under review
Guatemala	May 2007	15 November 2007 CAT/C/GTM/CO/4/Add.1	Response under review
Republic of Korea	May 2007	27 June 2007 CAT/C/KOR/CO/2/Add.1	Response under review
Peru	May 2007	Not received	Reminder
Qatar	May 2007	12 December 2006 CAT/C/QAT/CO/1/Add.1	Response under review
Togo	May 2007	Not received	Reminder
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Response under review

Thirty-seventh session (November 2006)

State party	Information due in	Information received	Action taken
Hungary	November 2007	15 November 2007 CAT/C/HUN/CO/4/Add.1	Response under review
Russian Federation	November 2007	23 August 2007 CAT/C/RUS/CO/4/Add.1	Response under review
Mexico	November 2007	Not received	Reminder
Guyana	November 2007	Not received	Reminder
Burundi	November 2007	Not received	Reminder
South Africa	November 2007	Not received	Reminder
Tajikistan	November 2007	Not received	Reminder

Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
Denmark	May 2008	Not received	
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Response under review
Japan	May 2008	Not received	
Luxembourg	May 2008	Not received	
The Netherlands	May 2008	Not received	
Poland	May 2008	Not received	
Ukraine	May 2008	Not received	

Thirty-ninth session (November 2007)

State party	Information due in	Information received	Action taken
Benin	November 2008	-	
Estonia	November 2008	-	
Latvia	November 2008	-	
Norway	November 2008	-	
Portugal	November 2008	-	
Uzbekistan	November 2008	19 February 2008 CAT/C/UZB/CO/3/Add.1	Response under review

Fortieth session (May 2008)

State party	Information due in	Information received	Action taken
Algeria	May 2009	-	
Australia	May 2009	-	
Costa Rica	May 2009	-	
Iceland	May 2009	-	
Indonesia	May 2009	-	
The former Yugoslav Republic of Macedonia	May 2009	-	
Sweden	May 2009	-	
Zambia	May 2009	-	

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

A. General information

59. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

60. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

61. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

62. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly. Such summary account is herewith provided in connection with Brazil.

63. In the framework of its follow-up activities, the Rapporteur on article 20, continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

B. Summary account of the result of the proceedings concerning the inquiry on Brazil

64. Brazil ratified the Convention on 28 September 1989. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention, as it could have done under article 28 of the Convention. Accordingly, the procedure under article 20 is applicable to Brazil.

65. In November 2002, the non-governmental organizations World Organization against Torture and Action by Christians against Torture (hereinafter, the "NGOs") submitted information to the Committee on the alleged systematic practice of torture in Brazil and requested the Committee to examine the situation in Brazil under article 20 of the Convention. This information summarized a previous report prepared by seven Brazilian NGOs working with prisons and detention centres concerning allegations of torture in the State of São Paulo for the period between 2000 and 2002.

66. During its twenty-ninth session in November 2002, the Committee examined the information submitted by the NGOs in private meetings and considered that the information was reliable and that it contained well-founded indications that torture was being systematically practised in Brazil.

67. At its 591st (closed) meeting, on 21 November 2003, the Committee decided to undertake a confidential inquiry and designated Mr. Claudio Grossman, Mr. Fernando Mariño and Mr. Ole Vedel Rasmmussen to conduct the inquiry. The Committee invited the Government of Brazil to cooperate with the Committee in the conduct of the inquiry, and accordingly, to appoint an accredited representative to meet with the members designated by the Committee; provide the latter with any information that they or the Government might consider useful; and indicate any other form of cooperation which might facilitate the conduct of the inquiry. This decision was transmitted to the Minister of Foreign Affairs of Brazil on 4 December 2003.

68. The Government of Brazil requested the postponement of the visit twice and, by note verbale dated 3 February 2005, the State party informed the Committee that it accepted its visit and agreed that it take place in July 2005. The visit took place from 13 to 29 July 2005. It was undertaken by Mr. Fernando Mariño Menendez and Mr. Claudio Grossman. Mr. Rasmussen was unable to participate in the visit.

69. On 1 June 2006, the Committee adopted the "Report on Brazil, produced by the Committee against Torture, under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/36/R.1/Add.1)" and, in accordance with article 20, paragraph 4, of the Convention, decided to transmit it to the Government of Brazil. At the same time, the Committee invited the Government to inform it of the action taken with regard to its findings and in response to its conclusions and recommendations.

70. In its conclusions, the Committee noted that the Government of Brazil fully cooperated with the Committee's visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve. However, the Committee noted that tens of thousands of persons were still held in *delegacias* and elsewhere in the penitentiary system where torture and similar ill-treatment continued to be meted out on a widespread and systematic basis.

71. On 16 April 2007, the Government submitted the information requested, whereby it informed the Committee that Brazil was already complying or considering compliance with the recommendations contained in the report. It stated that many of the measures responding to the

Committee's recommendations were already being taken on the initiative of the Brazilian governmental authorities. The Government noted that the Committee's recommendations were significantly useful for the prevention and the struggle against torture and other cruel, inhuman or degrading treatment and punishment in many circumstances and hoped to deepen and expand its dialogue with the Committee on that account.

72. On 22 November 2007, the Government informed the Committee that it agreed to the publication of the full text of the report together with the Government's response. Both are contained in document CAT/C/39/2.

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. Introduction

73. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-two out of 145 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

74. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's rules of procedure set out the complaints procedure in detail.

75. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

76. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

77. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur for new complaints and interim measures, may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

78. The Rapporteur for new complaints and interim measures has developed working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence is added to the request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of

the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him when he took his initial decision on interim measures.

79. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies can be dispensed with if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

80. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases alleging violations of article 3 of the Convention, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in many cases, requests for interim measures are lifted by the Special Rapporteur, on the basis of pertinent State party information received that obviates the need for interim measures.

C. Progress of work

81. At the time of adoption of the present report the Committee had registered, since 1989, 338 complaints with respect to 26 States parties. Of them, 93 complaints had been discontinued and 58 had been declared inadmissible. The Committee had adopted final decisions on the merits on 149 complaints and found violations of the Convention in 45 of them. Thirty-three complaints were pending for consideration and 4 were suspended, pending exhaustion of domestic remedies.

82. At its thirty-ninth session, the Committee declared inadmissible complaints Nos. 264/2005 (*A.B.A.O. v. France*), 304/2006 (*L.Z.B. et al. v. Canada*) and 308/2006 (*K.A. v. Sweden*). The three complaints concerned claims under article 3 of the Convention. The Committee declared them inadmissible, respectively, for incompatibility with the provisions of article 3 of the Convention, for non-exhaustion of domestic remedies and for being manifestly unfounded. The text of these decisions is reproduced in annex XI, section B, to the present report.

83. Also at its thirty-ninth session, the Committee adopted Views on complaints Nos. 269/2005 *(Ali Ben Salem v. Tunisia)*, 297/2006 (*Sogi v. Canada*), 299/2006 (*Iya v. Switzerland*), 303/2006 (*T.A. v. Sweden*). The text of these decisions is reproduced in annex XI, section A, to the present report.

84. Complaint No. 269/2005 *(Ali Ben Salem v. Tunisia)*, concerned a Tunisian national who alleged having been involved in human rights activities in Tunisia. His claims of having been subjected by the Tunisian police to severe pain and suffering were corroborated by medical certificates and other evidentiary materials. Despite abundant evidence that public officials had perpetrated the acts in question, the State party failed to carry out a prompt and impartial investigation. The Committee found a violation of the complainant's right to have his case promptly and impartially investigated by the State party's competent authorities, as well as of the right to obtain compensation. The Committee considered that the acts to which the complainant was subjected amounted to acts of torture within the meaning of article 1 of the Convention. It also considered that a delay of more than seven years before an investigation was initiated into allegations of torture was unreasonably long and did not meet the requirements of article 12 of the Convention. It also concluded that the State party did not fulfil its obligations under articles 13 and 14 of the Convention.

85. Complaint No. 297/2006 (*Sogi v. Canada*) concerned an Indian national accused of being a member of a Sikh militant terrorist organization, who alleged having been arrested and tortured several times in India on the basis of his alleged affiliation. He sought asylum in Canada, where his request for protection was denied on the ground of his membership in the Babbar Khalsa International terrorist group, which posed a threat to Canada's national security. The complainant was deported to India after being held under arrest for nearly four years, on the basis of secret evidence, and was never allowed to know the charges or evidence against him. The Committee had requested the State party not to deport him while the case was under consideration by the Committee. The State party justified the decision by the fact that the complainant had failed to establish that he faced a substantial risk of torture in his country of origin. The complainant's counsel reported that he was arrested by Indian police on arrival at the airport, taken to the Gurdaspur police station where he had been beaten and ill-treated, and subsequently charged with having supplied explosives to a person who had been convicted under Canadian law. The Committee established that, by the time he was returned to India, the complainant had provided sufficient evidence to the State party's authorities to show that he ran a personal, real and foreseeable risk of being subjected to torture if he was returned to India. Furthermore, the complainant did not enjoy the necessary guarantees in the pre-removal procedure in Canada. Consequently, the Committee found that, by sending him back to India despite the Committee's repeated requests for interim measures, the State party had committed a breach of its obligations under articles 3 and 22 of the Convention.

86. In its views on complaint No. 299/2006 (*Iya v. Switzerland*), the Committee considered that the complainant's case had never been examined on the merits by the State party's competent authorities, as they had twice rejected his asylum request merely on the basis of his failure to submit identity documents within the initial deadline. The complainant's two requests to reopen the procedures had also been rejected on procedural grounds. The Committee took into account that the State party had not presented sufficiently substantiated arguments to challenge the validity of the complainant's evidence and his declarations. It found that the complainant's political activities as a journalist and as a militant of a political opposition party in the

Democratic Republic of the Congo, his detention there and the fact that he was being searched in that country, were sufficient arguments to conclude that he would face a personal risk of torture if returned to the Democratic Republic of the Congo. It therefore found that the complainant's return to the Democratic Republic of the Congo would constitute a breach by Switzerland of his rights under article 3 of the Convention.

87. In its decision on complaint No. 303/2006 (*T.A. v. Sweden*), the Committee considered that the complainant's expulsion to Azerbaijan would not violate article 3 of the Convention, in the absence of a foreseeable, real and personal risk of being tortured upon return to that country.

88. At its fortieth session, the Committee adopted decisions on the merits in respect of complaints Nos. 293/2006 (*J.A.M.O. et al. v. Canada*), 301/2006 (*Z.K. v. Sweden*), 309/2006 (*R.K. et al. v. Sweden*) and 311/2007 (*M.X. v. Switzerland*). The text of these decisions is also reproduced in annex XI, section A, to the present report.

89. In its decision on complaint No. 293/2006 (*J.A.M.O. et al. v. Canada*), concerning the complainant's allegation that his expulsion to Mexico would constitute a breach by Canada of his rights under article 3 of the Convention, the Committee noted the absence of objective evidence pointing to the existence of risk of torture by the complainant, his wife and his daughter. Accordingly, the Committee concluded that their removal to Mexico would not violate article 3 of the Convention.

90. In complaint No. 301/2006 (*Z.K. v. Sweden*) the complainant claimed that his deportation to Azerbaijan would constitute a violation of article 3 of the Convention, as he risked being arrested, tortured and killed, in relation to his political activities and his role as an electoral observer during past general elections in that country. The Committee concluded that it did not necessarily follow that several years after the alleged mistreatment by the Azerbaijani authorities occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan. In addition, he failed to demonstrate that his activities as a party member were of such significance that he would attract the interest of the Azerbaijani authorities. Further, the Committee considered that the complainant failed to provide any information that he had been involved in Azerbaijani politics from Sweden, outside of a protest in April 2005, so as to attract interest of the authorities or experience persecution. The Committee therefore concluded that his removal to Azerbaijan would not constitute a breach of article 3 of the Convention.

91. In complaint No. 309/2006 (*R.K. et al. v. Sweden*) the complainant claimed that his deportation and that of his family to Azerbaijan would constitute a violation of article 3 of the Convention, as he risked being tortured on account of his political activities as a member of the Musavat party, his activities as a journalist, a witness statement he is alleged to have made before an Azerbaijani court relating to the demonstrations which accompanied the elections of 2003, and on medical evidence which he claimed confirms that he suffers from post traumatic stress disorder due to past acts of torture. The Committee observed that the author was not in a leading position in the party, that he failed to adduce evidence of his involvement in the demonstrations that accompanied the elections of 2003, and that he admitted that he was not convicted of any charge following these demonstrations and was not wanted by the authorities. On the issue of past torture, the Committee considered that, irrespective of the contents of the medical reports, it did not automatically follow that several years after the alleged events

occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan in the near future. It concluded that the complainant's removal, and that of his family whose claim is dependent upon his, to that country would not constitute a breach of article 3 of the Convention.

92. In its decision on complaint No. 311/2007 (*M.X. v. Switzerland*), concerning the complainant's allegation that his expulsion to Belarus would breach Switzerland's obligations under article 3 of the Convention, the Committee took note of the absence of sufficient evidence that would allow it to conclude that the complainant would face a foreseeable, real and personal risk of being tortured in his country of origin. Accordingly, the Committee found that the complainant's removal to Belarus would not breach article 3 of the Convention.

D. Follow-up activities

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); the Netherlands (with respect to *Ali Jeljeli*, No. 91/1997); Spain (*Encarnación Blanco Abad*, No. 59/1996, and *Urra Guridi*, No. 212/2002); Serbia and Montenegro (with respect to *Dimitrov*, No. 171/2000, *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000 and *Dragan Dimitrijevic*, No. 207/2002); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

95. Action taken by the States parties in the following cases complied fully with the Committee's Decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);[4]

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[4] Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

Mutombo v. Switzerland (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakaflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No. 101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*[5] (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

96. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004).

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Suleymane Guengueng and others v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); and *Tebourski v. France* (No. 300/2006).

98. During the thirty-ninth and fortieth sessions, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the last annual report with respect to the following cases: *Quani Halimi-Nedzibi v. Austria* (No. 8/1991); *Chipana v. Venezuela* (No. 110/1998); *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004)); *Suleymane Guengueng and others v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Ali Ben Salem v. Tunisia* (No. 269/2005); *Elif Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Jean-Patrick Iya v. Switzerland* (No. 299/2006); and *Tebourski v. France* (No. 300/2006).

99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

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[5] The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the fortieth session

State party	**AUSTRIA**
Case	**Halimi-Nedibi Quani, 8/1991**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	12 January 2007
State party response	The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the

	complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.
Complainant's response	None
Committee's decision	The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case under the follow-up procedure.
State party	**AUSTRALIA**
Case	**Shek Elmi, 120/1998**
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None
Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public

	interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999. On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.
Author's response	N/A
Committee's decision	In light of the complainant's voluntary departure no further action was requested under follow-up.
State party	**AZERBAIJAN**
Case	**Pelit, 281/2005**
Nationality and country of removal if applicable	Turkish to Turkey

Views adopted on	30 April 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party (assurances had been granted).[6]
Remedy recommended	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	29 August 2007
Date of reply	4 September 2007
State party response	The Azeri authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azeri Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.
Complainant's response	On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to 6 years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.

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[6] The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

Committee's decision	The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.
State party	**CANADA**
Case	**Tahir Hussain Khan, 15/1994**
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to the Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Case	**Falcon Rios, 133/1999**
Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	Relevant measures
Due date for State party response	None

Date of reply	Latest reply on 14 January 2008 (had previously responded on 9 March 2005 and 17 May 2007).
State party response	On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review. On 17 May 2007, the State party had informed the Committee that, on 28 March 2007, the complainant had filed two appeals before the Federal Court and that at that point, the Government of Canada did not intend to implement the order to return the complainant to Mexico. On 14 January 2008, the State party informed the Committee that the two appeals were dismissed by the Federal Court in June 2007, and that the immigration agent's decisions are now final. For the moment, however, it did not intend to return the complainant to Mexico. It will inform the Committee of any future developments in this case.

Complainant's response	On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.
Committee's decision	The Committee considers the dialogue ongoing.
Case	**Dadar, 258/2004**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Yes and State party acceded
Remedy recommended	The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	26 February 2006
Date of reply	Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006 and 5 April 2007 - see annual report A/62/44).
State party response	The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's

determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on the question of torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

Complainant's response

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.

On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he

	received in Canada to treat his medical condition. Moreover, the Iranian authorities had delivered a copy of the Committee's decision to his home and requested his attendance for questioning. On 1 June 2007, counsel informed the Committee that but for the intervention of the complainant's brother prior to his arrival in Tehran and during the period of his detention immediately following his arrival, with a high ranking member of the Iranian Intelligence Service, the complainant would have been tortured and possibly executed. He requests that the case not be removed from the Committee's follow-up procedure.
Action taken	See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to the State party.
Committee's decision	During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.
Case	**Bachan Singh Sogi, 297/2006**
Nationality and country of removal if applicable	Indian to India
Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Interim measures granted and State party	Requested but rejected by the State party.[7]

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[7] "As regards non-compliance with the Committee's requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual

response	
Remedy recommended	To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.
Due date for State party response	28 February 2008
Date of reply	29 February 2008
State party response	The State party regrets that it is not in a position to implement the Committee's Views. It does not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submits that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for up-dated information on the complainant.

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complaints established thereunder. The Committee also notes that the State party's obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention. (See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6) Consequently the Committee considers that, by sending the complainant back to India despite the Committee's repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention."

The State party submits that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee (para. 10.2). It reminds the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant's deportation was based on the decision of 11 May 2006. In this latter decision, the Minister's delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant's situation gave way to "exceptional circumstances" justifying his return despite the risk of torture.

The State party contests the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant's case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contests the Committee's View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. The State party reiterates that the evaluation of risk was undertaken independently to the question of the threat the complainant posed to society, and the proof in question related only to the issue of danger posed. In addition, the law itself which allows for the consideration of information to which a complainant has not been made privy was considered by the Court of Federal Appeal in the complainant's case to be constitutional and the Human Rights Committee did not consider a similar procedure contrary to the Covenant on Civil and Political Rights.

However, the State party informs the Committee that the law has been amended and that since 22 February 2008, to the extent that the nomination of a "special lawyer" is authorized to defend the individual in his absence and in the absence of his own lawyer, when such information is considered in camera.

As to the Committee's point that it is entitled to freely assess the facts of each case (para. 10.3), the State party refers to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity etc. (see cases 282/2005 and 193/2001). In this context, it submits that the delegate's decision was reviewed in detail by the Court of Federal Appeal, which itself reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

Complainant's response	None
Committee's decision	The Committee considers the follow-up dialogue ongoing.
State party	**FRANCE**
Case	**Arana, 63/1997**
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3.

Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion.[8]
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, inter alia, that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).
Complainant's response	On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional". In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain.

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[8] No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

	Also on 18 January 2001, the French Ministry of the Interior, stated, inter alia, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities. However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment by the Spanish authorities is corroborated by a number of sources.
Committee's decision	Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.
Case	**Brada, 195/2003**
Nationality and country of removal if applicable	Algerian to Algeria
Views adopted on	17 May 2005
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party.[9]
Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.

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[9] "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

Due date for State party response	None
Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Complainant's response	None
Case	**Tebourski, 300/2006**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	1 May 2007
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party.[10]

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[10] The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the

Remedy recommended	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
Due date for State party response	13 August 2007
Date of reply	15 August 2007
State party response	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.
Complainant's response	Not yet received
Committee's decision	The Committee considers the dialogue ongoing.
State party	**THE NETHERLANDS**
Case	**Ali Jeljeli, 91/1997**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.

Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

Due date for State party response	None
Date of reply	None
State party response	No information provided
Complainant's response	None
State party	**NORWAY**
Case	**Dar, 249/2004**
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	11 May 2007
Issues and violations found	Removal - article 22
Interim measures granted and State party response	Requested but not acceded to by the State party.[11]
Remedy recommended	None - State party has already remedied the breach
Due date for State party response	N/A

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[11] "The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention. However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for 3 years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention."

State party	**SENEGAL**
Case	**Suleymane Guengueng and others, 181/2001**
Nationality and country of removal if applicable	N/A
Views adopted on	17 May 2006
Issues and violations found	Failure to prosecute - articles 5, paragraph 2, and 7
Interim measures granted and State party response	N/A
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.
Due date for State party response	16 August 2006
Date of reply	17 June 2008 (had previously responded on 18 August, 28 September 2006, 8 March 2007 and 31 July 2007)
State party response	On 18 August 2006, the State party denied that it had violated the Convention, and reiterated its arguments on the merits, including its argument on article 5 that under the Convention a State party is not obliged to meet its obligations within a particular time. The extradition request was dealt with under national law applicable between the State party and States with which it does not have an extradition treaty. It stated that any other way of handling this case would have violated national law. The integration of article 5 into domestic law is in its final stage and the relevant text would be examined by the Legislative Authority. To avoid possible impunity, the State party submitted that it had deferred the case to the African Union for consideration, thus avoiding a violation of

article 7. As the African Union had not yet considered the case at that point, it would be impossible to provide the complainants with compensation.

On 28 September 2006, the State party informed the Committee that the Committee of Eminent Jurists of the African Union had taken the decision to entrust Senegal with the task of trying Mr. Habré of the charges against him. It stated that its judicial authorities were looking into the judicial feasibility and the necessary elements of a contract to be signed between the State party and the African Union on logistics and finance.

On 7 March 2007, the State party provided the following update. It submitted that on 9 November 2006, the Council of Ministers had adopted two new laws relating to the recognition of genocide, war crimes, and crimes against humanity as well as universal jurisdiction and judicial cooperation. The adoption of these laws fills the legal gap which had prevented the State party from recognizing the Habré case. On 23 November 2006, a working group was set up to consider the necessary measures to be taken to try Mr. Habré in a fair manner. This working group has considered the following: texts of the National Assembly on legal changes to remove obstacles highlighted during the consideration of the request for extradition on 20 September 2005; a framework for the infrastructural, legislative and administrative changes necessary to conform with the African Union's request for a fair trial; measures to be taken in the diplomatic sphere to ensure cooperation between all of the countries concerned as well as other States and the African Union; security issues; and financial support. These elements were included in a report to the African Union during its eighth session which was held between 29 and 30 January 2007.

The report underlined the necessity to mobilize financial resources from the international community.

On 31 July 2007 the State party informed the Committee that, contrary to the statement of counsel, the crime of torture is defined in article 295-1 of Law No. 96-15 and its scope has been strengthened by article 431-6 of Law 2007-02. It also emphasizes that the conduct of proceedings against Mr. Habré require considerable financial resources. For this reason, the African Union invited its member States and the international community to assist Senegal in that respect. Furthermore, the proposals made by the working group referred to above regarding the trial of Mr. Habré were submitted to the 8th Conference of Heads of State and Government of the African Union and approved. The Senegalese authorities are evaluating the cost of the proceedings and a decision in that respect will be adopted soon. In any case, they intend to fill the mandate given to them by the African Union and to meet Senegal's treaty obligations.

On 17 June 2008, the State party confirmed the information provided by the State party's representative to the Rapporteur during its meeting on 15 May 2008. It submits that the passing of a law which will amend its constitution will shortly be confirmed by Parliament. This law will add a new paragraph to article 9 of the Constitution which will circumvent the current prohibition on the retroactivity of criminal law and allow individuals to be judged for crimes including genocide, crimes against humanity and war crimes, which were considered crimes under international law at the time in which they were committed. On the issue of the budget, the State party submits that the figure of 18 million francs CFA (equivalent to around 43,000 USD) was the initial figure anticipated. That a counter proposal has been examined by the cabinet and that once this report is final a meeting will be organized in

Dakar with the potential donors. To express its commitment to the process, the State itself has contributed 1 million francs CFA (equivalent to 2,400 USD) to commence the process. The State party has also taken account of the European Union experts recommendation, and named Mr. Ibrahima Gueye, Judge and President of the Court of Cassation as the "Coordinator" of the process. It is also foreseen to reinforce the human resources of the Tribunal in Dakar which will try Mr. Habré, as well as the designation of the necessary judges.

Complainant's response

On 9 October 2006, the complainants commented on the State party's submission of 18 August 2006. They stated that the State party had provided no information on what action it intends to take to implement the Committee's decision. Even three months after the African Union's decision that Senegal should try Mr. Habré, the State party had still failed to clarify how it intends to implement the decision.

On 24 April 2007, the complainants responded to the State party's submission of 7 March 2007. They thanked the Committee for its decision and for the follow-up procedure which they are convinced play an important role in the State party's efforts to implement the decision. They greeted the judicial amendments referred to by the State party, which had prevented it from recognizing the Habré affaire.

While recognizing the efforts made to date by the State party, the complainants highlighted the fact that the decision has not yet been fully implemented and that this case has not yet been submitted to the competent authorities. They also highlighted the following points:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.

2. Given that the State party has an obligation to proceed with the trial or extradite Mr. Habré, the same should not be conditional upon the receipt by the State party of financial assistance. The complainants assume that this request is made to ensure that a trial is carried out in the best possible conditions.

3. Irrespective of what the African Union has decided with respect to this affair, it can have no implications as to the State party's obligation to recognize this affair and to submit it to the competent jurisdiction.

On 19 October 2007, counsel expressed concern at the fact that 17 months after the Committee had taken its decision, no criminal proceedings had yet been initiated in the State party and no decision regarding extradition had been taken. He emphasized that time was very important for the victims and that one of the complainants had died as a result of the ill-treatment suffered during Habré's regime. Counsel requested the Committee to continue engaging the State party under the follow-up procedure.

On 7 April 2008, counsel reiterated his concern that despite the passage of 21 months since the Committee's decision, Mr. Habré has still neither been brought to trial nor extradited. He recalls that the Ambassador, in his meeting with the Special Rapporteur during the November session of the Committee in 2007, indicated that the authorities were waiting for financial support from the international community. Apparently, this request for aid was made in July 2007 and responses were received from, among other countries, the European Union, France, Switzerland, Belgium and the Netherlands. These countries indicated that they would be prepared to assist financially as well as technically. The Senegalese authorities assured the victims last November that proceedings would not be held up but to date no date has been fixed for criminal action.

Further action taken/required	During the thirty-ninth session, the Special Rapporteur on follow-up met with a representative of the Permanent Mission of Senegal who expressed the interest of the State party in continuing cooperation with the Committee on this case. He indicated that a cost assessment to carry out the trial had been made and a donors meeting at which European countries would participate would be held soon. On 15 May 2008, the Special Rapporteur met again with a State party representative. A copy of the letter from the complainants counsel, dated 7 April 2008, was given to the representative of the Mission for information. As to an update on the implementation of the Committee's decision, the representative stated that an expert working group had submitted its report to the government on the modalities and budget of initiating proceedings and that this report had been sent to those countries which had expressed their willingness to assist Senegal. The European Union countries concerned returned the report with a counter proposal, which the President is currently reviewing. In addition, the President recognizing the importance of the affair, has put aside a certain sum of money (amount not provided) to commence proceedings. Legislative reform is also underway. The representative stated that a fuller explanation would be provided in writing from the State party and the Rapporteur gave the State party one month from the date of the meeting itself for the purposes of including it in this annual report.
Committee's decision	The Committee considers the follow-up dialogue ongoing.

State party	**SERBIA AND MONTENEGRO**
Case	**Ristic, 113/1998**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	11 May 2001
Issues and violations found	Failure to investigate allegations of torture by police - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to carry out such investigations without delay. An appropriate remedy.
Due date for State party response	6 January 1999
Date of reply	Latest note verbale 28 July 2006 (had replied on 5 August 2005 - See the annual report of the Committee, A/61/44)
State party response	The Committee will recall that by note verbale of 5 August 2005, the State party confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court, this decision was neither effective nor enforceable at that stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death. On 28 July 2006, the State party informed the Committee that the District Court of Belgrade had dismissed the complaint filed by the Republic of Serbia and the State Union of Serbia and Montenegro in May 2005. On 8 February 2006, the Supreme Court of Serbia

	dismissed as unfounded the revised statement of the State Union of Serbia and Montenegro, ruling that it is bound to meet its obligations under the Convention. It was also held responsible for the failure to launch a prompt, impartial and full investigation into the death of Milan Ristic.
Complainant's response	On 25 March 2005, the Committee received information from the Humanitarian Law Center in Belgrade to the effect that the First Municipal Court in Belgrade had ordered the State party to pay compensation of 1,000,000 dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death in compliance with the decision of the Committee against Torture.
Case	**Hajrizi Dzemajl et al., 161/2000**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	21 November 2002
Issues and violations found	Burning and destruction of houses, failure to investigate and failure to provide compensation - articles 16, paragraph 1, 12 and 13.[12]
Interim measures granted and State party response	None

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[12] Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

Remedy recommended	Urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation.
Due date for State party response	None
Date of reply	See CAT/C/32/FU/1
State party response	See first follow-up report (CAT/C/32/FU/1). Following the thirty-third session and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the State party should be reminded of its obligation to conduct a proper investigation into the case.
Complainant's response	None
Case	**Dimitrov, 171/2000**
Nationality and country of removal if applicable	Yugoslav
Views adopted on	3 May 2005
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with 1, 12, 13 and 14
Interim measures granted and State party response	N/A
Date of reply	None
State party response	None
Complainant's response	N/A
Case	**Dimitrijevic, 172/2000**
Nationality and country of removal if applicable	Serbian
Views adopted on	16 November 2005

Issues and violations found	Torture and failure to investigate - articles 1, 2, paragraphs 1, 12, 13, and 14
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	26 February 2006
Date of reply	None
State party response	None
Complainant's response	N/A
Case	**Nikolic, 174/2000**
Nationality and country of removal if applicable	N/A
Views adopted on	24 November 2005
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	N/A
Remedy recommended	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
Due date for State party response	27 February 2006
Date of reply	None
State party response	None
Complainant's response	N/A

Case	**Dimitrijevic, Dragan, 207/2002**
Nationality and country of removal if applicable	Serbian
Views adopted on	24 November 2004
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with articles 1, 12, 13, and 14.
Interim measures granted and State party response	None
Remedy recommended	To conduct a proper investigation into the facts alleged by the complainant.
Due date for State party response	February 2005
Date of reply	None
State party response	None
Complainant's response	On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.
State party	**SPAIN**
Case	**Encarnación Blanco Abad, 59/1996.**
Nationality and country of removal if applicable	Spanish
Views adopted on	14 May 1998
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None

State party response	No information provided
Complainant's response	N/A
Case	**Urra Guridi, 212/2002**
Nationality and country of removal if applicable	Spanish
Views adopted on	17 May 2005
Issues and violations found	Failure to prevent and punish torture, and provide a remedy - articles 2, 4 and 14
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to ensure in practice that those individuals responsible of acts of torture be appropriately punished, to ensure the complainant full redress.
Due date for State party response	18 August 2005
Date of reply	None
State party response	No information provided
Complainant's response	N/A
State party	**SWEDEN**
Case	**Tapia Páez, 39/1996**
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	28 April 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Páez to Peru.
Due date for State party response	None

Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 23 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Kisoki, 41/1996**
Nationality and country of removal if applicable	Democratic Republic of the Congo citizen to the Democratic Republic of the Congo.
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to the Democratic Republic of the Congo.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 7 November 1996.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	**Tala, 43/1996**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	15 November 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	**Avedes Hamayak Korban, 88/1997**
Nationality and country of removal if applicable	Iraqi to Iraq
Views adopted on	16 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.

Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Ali Falakaflaki, 89/1997**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	8 May 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 17 July 1998.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	**Orhan Ayas, 97/1997**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 8 July 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	**Halil Haydin, 101/1997**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	20 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.

Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 19 February 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**A.S., 149/1999**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	24 November 2000
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a real risk of being expelled or returned to Iran.
Due date for State party response	None
Date of reply	22 February 2001
State party response	The State party informed the Committee that on 30 January 2001, the Aliens Appeals Board examined a new application for residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the complainant's son a permanent residence permit.

Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Chedli Ben Ahmed Karoui, 185/2001**
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	8 May 2002
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	None
Due date for State party response	None
Date of reply	23 August 2005
State party response	No further consideration under follow-up procedure. See first follow-up report (CAT/C/32/FU/1) in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.
Complainant's response	None
Case	**Tharina, 226/2003**
Nationality and country of removal if applicable	Bangladeshi to Bangladesh
Views adopted on	6 May 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.

Remedy recommended	Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days, from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	15 August 2005
Date of reply	17 August 2005 (was not received by OHCHR, so resent by the State party on 29 June 2006).
State party response	On 20 June 2005, the Board decided to revoke the expulsion decision regarding the complainant and her daughter and to grant them residence permits.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Agiza, 233/2003**
Nationality and country of removal if applicable	Egyptian to Egypt
Views adopted on	20 May 2005
Issues and violations found	Removal - articles 3 (substantive and procedural violations) on two counts and 22 on two counts.[13]

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[13] (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints' jurisdiction of the Committee. That jurisdiction included the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon

Interim measures granted and State party response	None
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	20 August 2005
Date of reply	Latest information 25 May and 5 October 2007 (it had provided a response on 18 August 2005 - annual report of the Committee, A/61/44 and 1 September 2006 - annual report of the Committee, A/62/44).
State party's response	The Committee will recall the State party's submission on follow-up in which it referred inter alia to the enactment of a new Aliens Act and the continual monitoring of the complainant by staff from the Swedish Embassy in Cairo. See annual report of the Committee (A/61/44) for a full account of its submission.

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the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

(2) Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

On 1 September 2006, the State party provided an update on its monitoring of the complainant. It stated that embassy staff had made seven further visits to Mr. Agiza. Mr. Agiza had been in consistently good spirits and received regular visits in prison from his mother and brother. His health was said to be stable and he visited Manial Hospital once a week for physiotherapeutic treatment. The Embassy's staff has visited him now on 39 occasions and will continue the visits.

On 25 May 2007 the State party reported that five additional visits to the complainant had been conducted, which made a total of 44 visits. His well-being and health remained unchanged. He had on one occasion obtained permission to telephone his wife and children and he received visits from his mother. His father died in December 2006, but he did not receive permission to attend the funeral. Early in 2007, Mr. Agiza lodged a request to be granted a permanent residence permit in Sweden as well as compensation. The Government instructed the Office of the Chancellor of Justice to attempt to reach an agreement with Mr. Agiza on the issue of compensation. The request for a residence permit is being dealt with by the Migration Board.

On 5 October 2007, the State party informed the Committee of two further visits to Mr. Agiza, conducted on 17 July and 19 September 2007, respectively. He kept repeating that he was feeling well, although in summer he complained about not receiving sufficiently frequent medical treatment. That situation seems to have again improved. The Embassy's staff has visited Mr. Agiza in the prison on 46 occasions. These visits will continue. Furthermore, it is not possible at this moment to predict when the Migration Board and the Chancellor of Justice will be able to conclude Mr. Agiza's cases.

Complainant's response	On 31 October 2006, the complainant's counsel responded that he had a meeting with the Ambassador of the Swedish Embassy on 24 January 2006. During this meeting, counsel emphasized that it was essential that the embassy continue their visits as regularly as it has been doing. Counsel requested the State party to consider having a retrial in Sweden or to allow him to complete his imprisonment there, but the State party responded that no such steps were possible. In addition, requests for compensation ex gratia had been refused and it was suggested that a formal claim should be lodged under the Compensation Act. This has been done. According to counsel, although the monitoring aspect of the State party's efforts is satisfactory its efforts as a whole were said to be inadequate with respect to the request for contact with his family in Sweden, a retrial etc. On 20 July 2007, counsel reported that the meetings between Mr. Agiza and staff from the Swedish Embassy took place under the presence of prison officials and were video recorded. The officials had ordered Mr. Agiza not to express any critics against the prison conditions and he was under the threat of being transferred to a far remote prison. Furthermore, the medical treatment he received was insufficient and suffered, inter alia, from neurological problems which caused him difficulties to control his hands and legs, as well as from urination difficulties and a problem with a knee joint. The State party has repealed the expulsion decision of 18 December 2001. However, no decision has been taken yet by the Migration Board and the Chancellor of Justice.
Further action taken/or required	The State party provided follow-up information during the examination of its third periodic report to the Committee, which took place during the Committee's fortieth session,

	between 28 April and 16 May 2008. It indicated to the Committee that the office of the Chancellor of Justice was considering a request from the complainant for compensation for the violation of his rights under the Convention.
Committee's decision	The Committee considers the dialogue ongoing.
Case	**279/2005, C.T. and K.M.**
Nationality and country of removal if applicable	Rwandan to Rwanda
Views adopted on	17 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	1 March 2007
Date of reply	19 February 2007
State party response	On 29 January 2007, the Migration Board decided to grant the complainants permanent residence permits. They were also granted refugee status and travel documents.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

State party	**SWITZERLAND**
Case	**Mutombo, 13/1993**
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Alan, 21/1995**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**Aemei, 34/1995**
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will

	enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	**262/2005, V.L.**
Nationality and country of removal if applicable	Belarusian to Belarus
Views adopted on	20 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its

	rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	27 February 2007
Date of reply	23 March 2007
State party response	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	**280/2005, El Rgeig**
Nationality and country of removal if applicable	Libyan to Libyan Arab Jamahiriya
Views adopted on	15 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.
Due date for State party response	26 February 2007
Date of reply	19 January 2007
State party response	On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.

Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	**299/2006, Jean-Patrick Iya**
Nationality and country of removal if applicable	Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo
Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	28 May 2008
Date of reply	19 February 2008
State party response	On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant "temporary admission" and thus no longer risks removal to the Democratic Republic of the Congo.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
State party	**TUNISIA**
Case	**M'Barek, 60/1996**
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004

Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Complainant's response	None
Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005.
Cases	**Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001**
Nationality and country of removal if applicable	Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	To conduct an investigation into the complainants' allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.
Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006

State party response

See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below.

On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its arguments that the complaint was an abuse of process, that the complainants failed to exhaust domestic remedies, and that the motives of the NGO representing the complainants were not bona fide.

Complainant's response

One of the complainants (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland.

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing their surprise that the complainant had "withdrawn" his complaint without providing any reasons for doing so. They did not exclude pressure from the Tunisian authorities as a reason for doing so. They insisted that their own complaints were legitimate and encouraged the Committee to pursue their cases under the follow-up procedure.

On 12 December 2006, and having received a copy of the complainant's letter of "withdrawal" from the other complainants, the complainant's representative responded to the complainant's letter of 31 May 2005. The complainant's representative expressed its astonishment at the alleged withdrawal which it puts down to pressure on the complainant and his family and threats from the State party's authorities. This is clear from the manner in which the complaint is withdrawn. This withdrawal does not detract from the facts of the case nor does it free those who tortured the complainant from liability. It regrets the withdrawal and encourages the Committee to continue to consider this case under follow-up.

Consultations with State party

On 25 November 2005, the Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special Rapporteur explained that each case would have to be implemented separately and that the Committee had requested that investigations be carried out. The Ambassador asked why the Committee had thought it appropriate to consider the merits when the State party was of the view that domestic remedies had not been exhausted. The Special Rapporteur explained that the Committee had thought the measures

	referred to by the State party were ineffective, underlined by the fact that there had been no investigations in any of these cases in over 10 years since the allegations. The Ambassador confirmed that he would convey the Committee's concerns and request for investigations, in case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.
Committee's decision	The Committee accepted the complainant's request to "withdraw" his case No. 189/2001 and decided not to examine this case any further under the follow-up procedure.
Case	**Ali Ben Salem, 269/2005**
Nationality and country of removal if applicable	N/A
Views adopted on	7 November 2007
Issues and violations found	Failure to prevent and punish acts of torture, prompt and impartial investigation, right to complain, right to fair and adequate compensation - articles 1, 12, 13 and 14
Remedy recommended	Urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complaint.
Due date for State party response	26 February 2008
Date of reply	None
State party response	None

Complainant's response	On 3 March 2008, the complainant submitted that since the Committee's decision, he has been subjected again to ill-treatment and harassment by the State party's authorities. On 20 December 2007, he was thrown to the ground and kicked by police, who are in permanent watch outside his home, when he went to greet friends and colleagues who had come to visit him. His injuries were such that he had to be taken to hospital. The next day, several NGOs including the World Organization Against Torture (OMCT) (the complainant's representative), condemned the incident. The complainant now remains under surveillance 24 hours a day, thereby depriving him of his freedom of movement and contact with other people. His telephone line is regularly cut and his e-mail addresses are surveyed and systematically destroyed. Except for an appearance before a judge of the instance court on 8 January 2008, during which the complainant was heard on his complaint (filed in 2000) no action has been taken to follow up on the investigation of this case. In addition, the complainant does not see how the proceedings on 8 January relate to the implementation of the Committee's decision. He submits that he is currently in very poor health, that he does not have sufficient money to pay for his medical bills and recalls that the medical expenses for the re-education of victims of torture are considered reparation obligations.
Committee's decision	The Committee considers the follow-up dialogue ongoing. It informed the State party of its disappointment that it had not yet received information on the implementation of its decision. In addition, it expressed its disappointment at the new allegations, inter alia, that the complainant has again been subjected to ill-treatment and harassment by the State party authorities.

State party	**Bolivarian Republic of VENEZUELA**
Case	**Chipana, 110/1998**
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	10 November 1998
Issues and violations found	Complainant's extradition to Peru constituted a violation of article 3.
Interim measures granted and State party response	Granted but not acceded to by the State party.[14]
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	9 October 2007 (had previously responded on 13 June 2001, and 9 December 2005)
State party response	On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her to be in good health. She had been transferred in September 2000 from the top security pavilion to the "medium special security" pavilion, where she had other privileges. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that

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[14] The Committee stated "Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.

On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant's situation in Peru.

On 9 October 2007, the State party responded to the Committee's request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a

	modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.
Complainant's response	None

Complaints in which the Committee has found no violations of the Convention up to the fortieth session but in which it requested follow-up information

State party	**GERMANY**
Case	**M.A.K., 214/2002**
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.
Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004

State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Complainant's response	None
Committee's decision	No further action is required.

VII. FUTURE MEETINGS OF THE COMMITTEE

100. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2008-2009. Those dates are:

Fortieth	28 April-16 May 2008
Forty-first	3-21 November 2008
Forty-second	27 April-15 May 2009
Forty-third	2-20 November 2009

101. With reference to the annual report of the Committee to the General Assembly at its sixty-second session[15] and to chapter II, paragraph 25 of the present report, the Committee notes it will require additional meeting time in 2010 to consider the reports presented under the new reporting procedure, i.e. those reports submitted by States parties in response to the lists of issues prior to reporting. The extension of meeting time on an exceptional basis for three sessions per year is an important requirement to addressing the examination of the reports from States parties that have avail themselves of the new procedure.

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[15] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44), chapter II, paras. 23-24.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

102. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 835th meeting, held on 16 May 2008, the Committee considered and unanimously adopted the report on its activities at the thirty-ninth and fortieth sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 16 MAY 2008

Participant	*Signature*	*Ratification, Accession*[a] *Succession*[b]
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006[a]
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[a]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988

Participant	*Signature*	*Ratification, Accession[a] Succession[b]*
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996

Participant	*Signature*	*Ratification, Accession[a] Succession[b]*
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005[a]
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius	18 March 1985	9 December 1992[a]
Mexico		23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Montenegro		23 October 2006[b]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]

Participant	*Signature*	*Ratification, Accession*[a] *Succession*[b]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005[a]
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	27 November 2006[a]
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001[b]
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986

Participant	*Signature*	*Ratification, Accession[a] Succession[b]*
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004[a]
Tajikistan		11 January 1995[a]
Thailand		2 October 2007[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes

[a] Accession (76 countries).

[b] Succession (7 countries).

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 16 MAY 2008

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Mauritania

Poland

Saudi Arabia

Syrian Arab Republic

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 16 MAY 2008[a] [b]

State party	*Date of entry into force*
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia	14 February 2006
Bosnia and Herzegovina	4 June 2003
Brazil	26 June 2006
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987

State party	*Date of entry into force*
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006[c]
Morocco	19 October 2006
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	7 July 1988
Poland	12 June 1993
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia and Montenegro	12 March 2001
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Ukraine	12 September 2003
Venezuela	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 16 May 2008

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 16 May 2008[a]

State party	*Date of entry into force*
Azerbaijan	4 February 2002
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Seychelles	6 August 2001

Notes

[a] A total of 60 States parties have made the declaration under article 21.

[b] A total of 61 States parties have made the declaration under article 22.

[c] State party made the declaration under articles 21 and 21 by succession.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2008

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Essadia BELMIR	Morocco	2009
Ms. Felice GAER	United States of America	2011
Mr. Luis GALLEGOS CHIRIBOGA	Ecuador	2011
Mr. Abdoulaye GAYE	Senegal	2011
Mr. Claudio GROSSMAN	Chile	2011
Ms. Myrna KLEOPAS	Cyprus	2011
Mr. Alexander KOVALEV	Russian Federation	2009
Mr. Fernando MARIÑO	Spain	2009
Ms. Nora SVEAASS	Norway	2009
Mr. Xuexian WANG	China	2009

Annex V

MEMBERSHIP OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN 2008

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Silvia CASALE	United Kingdom of Great Britain and Northern Ireland	2008
Mr. Mario Luis CORIOLANO	Argentina	2008
Ms. Marija DEFINIS GOJANOVIĆ	Croatia	2010
Mr. Zdeněk HÁJEK	Czech Republic	2008
Mr. Zbigniew LASOCIK	Poland	2008
Mr. Hans Draminsky PETERSEN	Denmark	2010
Mr. Víctor Manuel RODRÍGUEZ RESCIA	Costa Rica	2008
Mr. Miguel SARRE IGUINIZ	Mexico	2010
Mr. Wilder TAYLER SOUTO	Uruguay	2010
Mr. Leopoldo TORRES BOURSAULT	Spain	2010

Annex VI

GENERAL COMMENT No. 2

I. IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES

1. This general comment addresses the three parts of article 2, each of which identifies distinct interrelated and essential principles that undergird the Convention's absolute prohibition against torture. Since the adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law. The provisions of article 2 reinforce this peremptory *jus cogens* norm against torture and constitute the foundation of the Committee's authority to implement effective means of prevention, including but not limited to those measures contained in the subsequent articles 3 to 16, in response to evolving threats, issues, and practices.

2. Article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it. To ensure that measures are in fact taken that are known to prevent or punish any acts of torture, the Convention outlines in subsequent articles obligations for the State party to take measures specified therein.

3. The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. Article 16, identifying the means of prevention of ill-treatment, emphasizes *"in particular"* the measures outlined in articles 10 to 13, but does not limit effective prevention to these articles, as the Committee has explained, for example, with respect to compensation in article 14. In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure.

4. States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. States parties also have the obligation continually to keep under review and improve their national laws and performance under the Convention in accordance with the Committee's concluding observations and views adopted on individual communications. If the measures adopted by the State party fail to accomplish the purpose of eradicating acts of torture, the Convention requires that they be revised and/or that new, more effective measures be adopted. Likewise, the Committee's understanding of and recommendations in respect of effective measures are in a process of continual evolution, as, unfortunately, are the methods of torture and ill-treatment.

II. ABSOLUTE PROHIBITION

5. Article 2, paragraph 2, provides that the prohibition against torture is absolute and non-derogable. It emphasizes that *no exceptional circumstances whatsoever* may be invoked by a State party to justify acts of torture in any territory under its jurisdiction. The Convention identifies as among such circumstances a state of war or threat thereof, internal political instability or any other public emergency. This includes any threat of terrorist acts or violent crime as well as armed conflict, international or non-international. The Committee is deeply concerned at and rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies in these and all other situations. Similarly, it rejects any religious or traditional justification that would violate this absolute prohibition. The Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.

6. The Committee reminds all States parties to the Convention of the non-derogable nature of the obligations undertaken by them in ratifying the Convention. In the aftermath of the attacks of 11 September 2001, the Committee specified that the obligations in articles 2 (whereby "no exceptional circumstances whatsoever…may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that "must be observed in all circumstances".[1] The Committee considers that articles 3 to 15 are likewise obligatory as applied to both torture and ill-treatment. The Committee recognizes that States parties may choose the measures through which they fulfil these obligations, so long as they are effective and consistent with the object and purpose of the Convention.

7. The Committee also understands that the concept of "any territory under its jurisdiction," linked as it is with the principle of non-derogability, includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party. The Committee emphasizes that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party. It is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence.

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[1] On 22 November 2001, the Committee adopted a statement in connection with the events of 11 September which was sent to each State party to the Convention (*Official Records, of the General Assembly, Fifty-seventh Session, Supplement No. 44* (A/57/44), paras. 17-18).

III. CONTENT OF THE OBLIGATION TO TAKE EFFECTIVE MEASURES TO PREVENT TORTURE

8. States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4.

9. Serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State party to ensure that all parts of its Government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State. At the same time, the Committee recognizes that broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the standards of the Convention, at a minimum. In particular, the Committee emphasizes that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances. It is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s).

10. The Committee recognizes that most States parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes. The Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present.

11. By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.

12. Through review of successive reports from States parties, the examination of individual communications, and monitoring of developments, the Committee has, in its concluding observations, articulated its understanding of what constitute effective measures, highlights of which we set forth here. In terms of both the principles of general application of article 2 and developments that build upon specific articles of the Convention, the Committee has recommended specific actions designed to enhance each State party's ability swiftly and effectively to implement measures necessary and appropriate to prevent acts of torture and ill-treatment and thereby assist States parties in bringing their law and practice into full compliance with the Convention.

13. Certain basic guarantees apply to all persons deprived of their liberty. Some of these are specified in the Convention, and the Committee consistently calls upon States parties to use them. The Committee's recommendations concerning effective measures aim to clarify the current baseline and are not exhaustive. Such guarantees include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.

14. Experience since the Convention came into force has enhanced the Committee's understanding of the scope and nature of the prohibition against torture, of the methodologies of torture, of the contexts and consequences in which it occurs, as well as of evolving effective measures to prevent it in different contexts. For example, the Committee has emphasized the importance of having same sex guards when privacy is involved. As new methods of prevention (e.g. videotaping all interrogations, utilizing investigative procedures such as the Istanbul Protocol of 1999,[2] or new approaches to public education or the protection of minors) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.

IV. SCOPE OF STATE OBLIGATIONS AND RESPONSIBILITY

15. The Convention imposes obligations on States parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm. The Convention does not, however, limit the international responsibility that States or individuals can incur for perpetrating torture and ill-treatment under international customary law and other treaties.

16. Article 2, paragraph 1, requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also "in any territory under its jurisdiction." The Committee has recognized that "any territory" includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to "any territory" in article 2, like that in articles 5, 11, 12, 13 and 16, refers to prohibited acts committed not only on board a ship or aircraft registered by a State party, but also during military occupation or peacekeeping

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[2] *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

operations and in such places as embassies, military bases, detention facilities, or other areas over which a State exercises factual or effective control. The Committee notes that this interpretation reinforces article 5, paragraph 1 (b), which requires that a State party must take measures to exercise jurisdiction "when the alleged offender is a national of the State." The Committee considers that the scope of "territory" under article 2 must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.

17. The Committee observes that States parties are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention. Thus, States parties should adopt effective measures to prevent such authorities or others acting in an official capacity or under colour of law, from consenting to or acquiescing in any acts of torture. The Committee has concluded that States parties are in violation of the Convention when they fail to fulfil these obligations. For example, where detention centres are privately owned or run, the Committee considers that personnel are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to monitor and take all effective measures to prevent torture and ill-treatment.

18. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

19. Additionally, if a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture in accordance with article 2, paragraph 1. The Committee has expressed its concern when States parties send persons to such places without due process of law as required by articles 2 and 3.

V. PROTECTION FOR INDIVIDUALS AND GROUPS MADE VULNERABLE BY DISCRIMINATION OR MARGINALIZATION

20. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention.

Non-discrimination is included within the definition of torture itself in article 1, paragraph 1, of the Convention, which explicitly prohibits specified acts when carried out for "*any reason based on discrimination of any kind* ...". The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

22. State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports.

23. Continual evaluation is therefore a crucial component of effective measures. The Committee has consistently recommended that States parties provide data disaggregated by age, gender and other key factors in their reports to enable the Committee to adequately evaluate the implementation of the Convention. Disaggregated data permits the States parties and the Committee to identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed. States parties are requested to describe, as far as possible, factors affecting the incidence and prevention of torture or ill-treatment, as well as the difficulties experienced in preventing torture or ill-treatment against specific relevant sectors of the population, such as minorities, victims of torture, children and women, taking into account the general and particular forms that such torture and ill-treatment may take.

24. Eliminating employment discrimination and conducting ongoing sensitization training in contexts where torture or ill-treatment is likely to be committed is also key to preventing such violations and building a culture of respect for women and minorities. States are encouraged to promote the hiring of persons belonging to minority groups and women, particularly in the

medical, educational, prison/detention, law enforcement, judicial and legal fields, within State institutions as well as the private sector. States parties should include in their reports information on their progress in these matters, disaggregated by gender, race, national origin, and other relevant status.

VI. OTHER PREVENTIVE MEASURES REQUIRED BY THE CONVENTION

25. Articles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention. The Committee emphasizes that the obligation to take effective preventive measures transcends the items enumerated specifically in the Convention or the demands of this general comment. For example, it is important that the general population be educated on the history, scope, and necessity of the non-derogable prohibition of torture and ill-treatment, as well as that law enforcement and other personnel receive education on recognizing and preventing torture and ill-treatment. Similarly, in light of its long experience in reviewing and assessing State reports on officially inflicted or sanctioned torture or ill-treatment, the Committee acknowledges the importance of adapting the concept of monitoring conditions to prevent torture and ill-treatment to situations where violence is inflicted privately. States parties should specifically include in their reports to the Committee detailed information on their implementation of preventive measures, disaggregated by relevant status.

VII. SUPERIOR ORDERS

26. The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture Thus, subordinates may not seek refuge in superior authority and should be held to account individually. At the same time, those exercising superior authority - including public officials - cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.

27. The Committee reiterates that this general comment has to be considered without prejudice to any higher degree of protection contained in any international instrument or national law, as long as they contain, as a minimum, the standards of the Convention.

Annex VII

FIRST ANNUAL REPORT OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT*

(February 2007 to March 2008)

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* The report complete with the annexes has been issued separately under symbol number CAT/C/40/2 and CAT/C/40/2/Corr.1.

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I. INTRODUCTION

1. The present document is the first annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Subcommittee was established[1] following the entry into force in June 2006[2] of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[3] As at 31 January 2008, the Optional Protocol had 34 States parties and 33 signatories.[4]

3. A total of 10 experts were elected by the then States parties as independent members of the Subcommittee in October 2006[5] and met for the first time in Geneva, at the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 19 February 2007. The present report gives an account of the work of the Subcommittee during its first year, covering the period from February 2007 to 15 March 2008.[6]

4. In accordance with the Optional Protocol,[7] the Subcommittee submits its public annual reports to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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[1] In accordance with article 2, paragraph 1, of the Optional Protocol.

[2] The Optional Protocol entered into force on 23 June 2006, 30 days after the twentieth ratification/ accession, in accordance with article 28, paragraph 1, of the Optional Protocol.

[3] The Optional Protocol was adopted by the General Assembly in its resolution 57/199 of 18 December 2002. Link to the text of the Optional Protocol: http://www2.ohchr.org/English/law/cat-one.htm.

[4] A list of States parties to the Optional Protocol is contained in annex I of its report (CAT/C/40/2).

[5] Article 5, paragraph 1, provides that the number of Subcommittee members shall increase to 25 with the fiftieth ratification of the Optional Protocol.

[6] In future years, it is intended that the Subcommittee on Prevention public annual reports will cover a 12 month period; in its first year the Subcommittee was invited to adopt an annual report at the end of its first session on 23 February 2007, but decided against doing so, as it met for the first time on 15 February to begin its work.

[7] Art. 16, para. 3.

II. MANDATE OF THE SUBCOMMITTEE

A. Objectives of the Optional Protocol to the Convention against Torture

5. The Subcommittee is a new type of United Nations treaty body with a unique mandate established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[8]

6. Article 1 of the Optional Protocol provides for a system of regular visits by mechanisms at the international and national levels to prevent all forms of ill-treatment of people who are deprived of their liberty. It establishes the Subcommittee as the international preventive mechanism with a global remit and requires each State party to set up, designate or maintain, at the domestic level, one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment - national preventive mechanisms.

B. Key features of the Subcommittee's mandate

7. The mandate of the Subcommittee is set out in article 11 of the Optional Protocol,[9] establishing that the Subcommittee shall:

(a) Visit places where people are or may be deprived of liberty;

(b) With regard to national preventive mechanisms, advise and assist States parties, when necessary, in their establishment; maintain direct contact with national preventive mechanisms and offer them training and technical assistance; advise and assist national preventive mechanisms in evaluating the needs and necessary means to improve safeguards against ill-treatment; and make necessary recommendations and observations to States parties with a view to strengthening the capacity and mandate of the national preventive mechanisms;

(c) Cooperate with relevant United Nations bodies as well as with international, regional and national bodies for the prevention of ill-treatment.

8. The Subcommittee regards the three elements of its mandate as essential for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

C. Powers of the Subcommittee under the Optional Protocol

9. In order for the Subcommittee to fulfil its mandate, it is granted considerable powers under article 14 of the Optional Protocol. Each State party is required to allow visits by the Subcommittee to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.[10]

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[8] Subcommittee on Prevention webpage link: http://www2.ohchr.org/english/bodies/cat/opcat/.

[9] Part III "Mandate of the Subcommittee on Prevention".

[10] Optional Protocol, articles 4 and 12 (a).

10. States parties furthermore undertake to grant the Subcommittee unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons and to their conditions of detention.[11] They are also required to grant the Subcommittee private interviews with persons deprived of liberty without witnesses.[12] The Subcommittee has the liberty to choose the places it wants to visit and the persons it wants to interview.[13] Similar powers are to be granted to national preventive mechanisms, in accordance with the Optional Protocol.[14]

D. Preventive approach

11. The work of the Subcommittee is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2.3 of the Optional Protocol. The report on a visit is part of the dialogue between the Subcommittee and the authorities aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment. The report on a visit to a State party is confidential until such time as it is made public in accordance with the provisions of the Optional Protocol.[15]

12. Whether or not ill-treatment occurs in practice, there is always a need for States to be vigilant in order to prevent it. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment. Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguards require strengthening. The Subcommittee's preventive approach is forward-looking. In examining examples of both good and bad practice, the Subcommittee seeks to build upon existing protections and to eliminate or reduce to a minimum the possibilities for abuse.

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[11] Ibid., arts. 12 (b) and 14, para. 1 (a) and (b).

[12] Ibid., art. 14, para. 1 (d).

[13] Ibid., art. 14, para. 1 (e).

[14] Ibid., arts. 19 and 20

[15] Ibid., art. 16, para. 2. The Subcommittee on Prevention shall publish its report, together with any comments of the State party concerned, whenever requested to do so by the State party. If the State party makes part of the report public, the Subcommittee may publish all or part of the report. If the State party refuses to cooperate with the Subcommittee on Prevention or to take steps to improve the situation in the light of the Subcommittee's recommendations, the Subcommittee may request the Committee against Torture to make a public statement or publish the Subcommittee report, after the State party has had an opportunity to make known its views.

13. The Subcommittee is required to observe confidentiality in its preventive work and looks forward to cooperating with all States parties to the Optional Protocol in strict confidentiality and with a shared commitment to improving the safeguards for prevention of all forms of ill-treatment of people deprived of their liberty.

III. VISITS BY THE SUBCOMMITTEE

A. Establishing the programme of visits

14. During its first year, the Subcommittee carried out two visits as part of its initial phase of preventive work. The initial programme of visits was sui generis, as the Subcommittee was obliged under the Optional Protocol to make an initial choice by drawing of lots for States to be visited. Maldives, Mauritius and Sweden were the countries drawn by lots. Subsequently, the Subcommittee decided on the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the Optional Protocol. The factors that may be taken into consideration in the choice of countries to be visited by the Subcommittee include date of ratification/development of national preventive mechanisms, geographic distribution, size and complexity of the State, regional preventive monitoring and urgent issues reported.

15. In 2007, the Subcommittee began to develop its approach to the strategic planning of its visit programme in relation to the existing 34 States parties. The Subcommittee took the view that, after the initial period of its development, the visits programme in the medium term should be based on the idea of eight visits per 12-month period. This annual rate of visits is based on the conclusion that, to visit States parties effectively in order to prevent ill-treatment, the Subcommittee would have to visit each State party at least once every four or five years on average. In the Subcommittee's view, less frequent visits could jeopardize the effective monitoring of how national preventive mechanisms fulfilled their role and the protection afforded to persons deprived of liberty. With 34 States parties, this means that the Subcommittee must visit, on average, eight States every year.

16. In the initial phase of visits, the Subcommittee developed its approach, working methods and benchmarks, and established ways to work in good cooperation and confidentiality with States parties with whom it began to build an ongoing dialogue. It also began to develop good working relations with national preventive mechanisms or with institutions which might become them. At this stage, the secretariat necessary to support a full programme of visits was not in place. The Subcommittee consequently carried out visits at less than maximum capacity during the period covered by the present report.

17. For the longer term, the point at which ratifications or accessions will reach a total of 50 remains an unknown variable in the strategic planning of visits. Following that event, the Subcommittee will become a 25-member body,[16] with a concomitant requirement for an increase in budgetary resources. The Subcommittee anticipates a period of adjustment at that stage, before it is able to use its increased capacity to the full.

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[16] In accordance with article 5, paragraph 1, of the Optional Protocol.

B. Visits carried out in 2007 and early 2008

18. The Subcommittee visited Mauritius from 8 October to 18 October 2007 and the Maldives from 10 to 17 December 2007; it visited Sweden from 10 to 15 March 2008.[17] During these visits, the delegations focused on the development process of the national preventive mechanism and the situation with regard to protection against ill-treatment, particularly of people deprived of their liberty in police facilities, prisons and in facilities for children.

19. At the end of 2007, the Subcommittee announced its forthcoming programme of regular visits in 2008, to Benin, Mexico, Paraguay and Sweden.[18] The Subcommittee also made plans for a number of preliminary visits to initiate the process of dialogue with States parties.

20. The initial visit to a State party is an opportunity to deliver important messages about the Subcommittee and its core concerns to the State party and to other relevant interlocutors. The Subcommittee stressed the confidential nature of its work, in accordance with the Optional Protocol. On its first three visits, it met with many officials in order to establish cooperative relations with the States parties and to explain fully its mandate and preventive approach. The Subcommittee also met with members of developing national preventive mechanisms and with members of civil society.

21. The first two visits involved a larger number of Subcommittee members than would normally be the case, in order that all members could take part in at least one visit in 2007. This was part of the Subcommittee's strategy to develop a consistent approach on visits despite the changing composition of delegations on visits. The visit to Sweden was of shorter duration. The Subcommittee adopted a more targeted approach, taking into account the preventive visiting already undertaken in Sweden and based on consultation and cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[19]

22. At the end of each visit, the delegation presented its preliminary observations to the authorities in confidence. The Subcommittee wishes to thank the authorities of Mauritius, the Maldives and Sweden for the spirit in which its delegations' initial observations were received and the constructive discussion about ways forward. At the end of the visit, the Subcommittee asked the authorities for feedback on the steps taken or being planned to address the issues raised in the preliminary observations. In addition, after each visit, the Subcommittee wrote to the

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[17] For details of the places visited, see annex III of CAT/C/40/2.

[18] The three countries chosen by initial drawing of lots - Mauritius, Maldives and Sweden - were announced in June 2007 as countries to be visited in the initial programme of visits. For the programme of regular SPT visits in 2008, see annex IV of CAT/C/40/2.

[19] Article 31 of the Optional Protocol encourages the Subcommittee on Prevention and bodies established under regional conventions to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the Optional Protocol.

authorities requesting updated information on any steps taken since the visit, on certain issues which could be or were due to be addressed in the weeks following it. The Subcommittee indicated that the immediate replies communicated by the authorities would be reflected in the visit report.

23. The drafting of the first visit report was begun in 2007. The process of its completion is taking longer than desired, owing to the staffing situation in the secretariat of the Subcommittee (see section V below). The authorities will be asked to respond in writing to the visit report; the Subcommittee hopes that, in due course, the authorities will request that the visit report and their response to it be published.[20] Until such time, the visit reports remain confidential.

IV. NATIONAL PREVENTIVE MECHANISMS

A. Subcommittee work related to national preventive mechanisms

24. During its first year, the Subcommittee repeatedly made contact with all States parties who were due to establish or maintain national preventive mechanisms in order to encourage them to communicate with the Subcommittee about the ongoing process of developing those mechanisms. States parties to the Optional Protocol were requested to send detailed information concerning the establishment of mechanisms (such as legal mandate, composition, size, expertise, financial resources at their disposal and frequency of visits).[21] By the third session of the Subcommittee in November 2007, only five States parties had provided such information. The Subcommittee decided to send a reminder letter to each State party upon expiration of the deadline for fulfilment of the obligation to establish national preventive mechanisms.

25. The Subcommittee was also in contact with a number of national preventive mechanisms and organizations, including national human rights institutions and non-governmental organizations involved in the development of mechanisms. The initiative for such contacts came from both the Subcommittee and national preventive mechanisms, some of which asked the Subcommittee for assistance. The Subcommittee is considering how to fulfil its mandate in response to requests for assistance from mechanisms in the absence of any budgetary provision for this part of its mandate (see section VI below).

26. During its three visits during the reporting period, the Subcommittee delegation met with the representatives of the national human rights commissions of Mauritius and the Maldives who had been given tasks with regard to the development of national preventive mechanisms. It also met with the parliamentary ombudsmen and the Chancellor of Justice of Sweden, designated as national preventive mechanisms. At its third session in November 2007, the Subcommittee met with representatives of the national preventive mechanism of Mexico at its request.

27. Members of the Subcommittee were also involved in a number of meetings, at the national, regional and international levels, concerning the development of national preventive mechanisms. Although there is no provision in the United Nations regular budget for activities

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[20] In accordance with article 16, paragraph 2, of the Optional Protocol.

[21] Having regard to the elements identified in articles 3, 4, 11, and 12 of the Optional Protocol.

related to the national preventive mechanisms, the Subcommittee members consider this part of their mandate so crucial that they have made every effort to be involved through self-funding and/or with generous support, including financial, from the Optional Protocol Contact Group.[22] This association of organizations involved in work related to the implementation of the Optional Protocol sponsored the participation of Subcommittee members in a range of important gatherings of key interlocutors and assisted the Subcommittee in its programme of developing working methods (see section V below).

B. Preliminary guidelines for the ongoing development of national preventive mechanisms

28. In order to facilitate dialogue with national preventive mechanisms generally, the Subcommittee wishes to indicate some preliminary guidelines concerning the process of establishing those mechanisms, by the development of new or existing bodies, and concerning certain key features of them:

(a) The mandate and powers of the national preventive mechanism should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty, in accordance with the Optional Protocol, shall be reflected in that text;

(b) The national preventive mechanism should be established by a public, inclusive and transparent process, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the national preventive mechanism, the matter should be open for debate, involving civil society;

(c) The independence of the national preventive mechanism, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position that could raise questions of conflict of interest;

(d) Selection of members should be based on stated criteria relating to the experience and expertise required to carry out national preventive mechanism work effectively and impartially;

(e) National preventive mechanism membership should be gender-balanced and have adequate representation of ethnic, minority and indigenous groups;

(f) The State shall take the necessary measures to ensure that the expert members of the national preventive mechanism have the required capabilities and professional knowledge. Training should be provided to national preventive mechanisms;

(g) Adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18, 3 of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources;

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[22] The organizations involved in the OPCAT Contact Group are indicated in annex IX of CAT/C/40/2.

(h) The work programme of national preventive mechanisms should cover all potential and actual places of deprivation of liberty;

(i) The scheduling of national preventive mechanism visits should ensure effective monitoring of such places with regard to safeguards against ill-treatment;

(j) Working methods of national preventive mechanisms should be developed and reviewed with a view to effective identification of good practice and gaps in protection;

(k) States should encourage national preventive mechanisms to report on visits with feedback on good practice and gaps in protection to the institutions concerned, and address recommendations to the responsible authorities on improvements in practice, policy and law;

(l) National preventive mechanisms and the authorities should establish an ongoing dialogue based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations, in accordance with article 22 of the Optional Protocol;

(m) The annual report of national preventive mechanisms shall be published in accordance with article 23 of the Optional Protocol;

(n) The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally.

29. The Subcommittee is concerned at the lack of progress to date in many States parties with regard to the required process of consultation for the establishment of national preventive mechanisms and the necessary legislative and practical provisions to ensure that they can work effectively. Unless the mechanisms are able to fulfil their role as the on-the-spot visiting mechanisms for the prevention of ill-treatment, the work of the Subcommittee will be seriously limited and adversely affected. The Subcommittee is keen to continue and intensify its direct contact with national preventive mechanisms and looks forward to being in a position to devote more resources to this important part of its mandate (see section VI below).

V. COOPERATION WITH OTHER BODIES

A. States parties

30. During the reporting period, the Subcommittee sought to establish relations with States parties in accordance with the principle of cooperation [23] and in order to prepare for the start of its operational work.

31. In the context of its sessions in Geneva, the Subcommittee had a joint meeting with representatives of the three States parties (Maldives, Mauritius and Sweden) drawn at first by lot, in accordance with the Optional Protocol.[24] This provided a valuable opportunity for the

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[23] Optional Protocol, article 2, paragraph 4.

[24] Ibid., art. 13, para. 1.

Subcommittee to inform these States parties of its initial visits programme and to exchange views concerning preventive visiting. Subsequently, the Subcommittee met with representatives of individual States parties at their request shortly before the commencement of a visit, in order to inform them about the programme of forthcoming visits and to discuss various issues arising in relation to the conduct of Subcommittee visits, including the facilitation of visits by authorities, the powers of access of the Subcommittee, the approach of Subcommittee delegations, initial feedback and reporting on the visit and ongoing dialogue. During the period covered by the present report, the individual meetings were held with representatives of Mauritius, Maldives, Sweden and Benin.

B. Relevant United Nations bodies

32. The Optional Protocol establishes a special relationship between the Committee against Torture and the Subcommittee and provides that both organs should hold simultaneous sessions at least once a year.[25] The third session of the Subcommittee was held simultaneously with part of the thirty-ninth session of the Committee; the first joint meeting was held on 20 November 2007. Discussions covered, inter alia, the implementation of the Optional Protocol through ratifications; national preventive mechanisms; country visits and their timetabling; cooperation between the Committee and the Subcommittee and sharing of information between them; and public annual reports of the Subcommittee. The two treaty bodies agreed on a short joint statement acknowledging the cordial and productive nature of this historic first meeting, with unanimous agreement to work together on the two complementary mandates.

33. The Committee and the Subcommittee agreed to create a contact group made up of two members from each treaty body to facilitate contacts.

34. The Optional Protocol establishes certain important functions of the Committee with regard to the Subcommittee. The Subcommittee presents its public annual reports to the Committee. In addition, the Committee has the power to lift the veil of confidentiality normally applying to Subcommittee visits if a State party refuses to cooperate with the Subcommittee or to take steps to improve the situation in the light of the Subcommittee's recommendations.[26] The Subcommittee trusts that such an eventuality will not arise and looks forward to cooperating with all the States parties to the Optional Protocol.

35. During its plenary sessions, Subcommittee members discussed relations and attended meetings with members of other relevant United Nations bodies. In particular, given the similarity between the Subcommittee's work and that of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Subcommittee has maintained close contact *with* the Special Rapporteur and had constructive discussions and exchanges of views with him on issues common to both mandates.

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[25] Ibid., art. 10, para. 3.

[26] Ibid., arts. 16, para. 4, and 24.

C. Other international organizations

36. The Optional Protocol provides that the Subcommittee should consult with bodies established under regional conventions with a view to cooperating with them and avoiding duplication, in order to promote effectively the objectives of the Optional Protocol to prevent torture and other forms of ill-treatment.[27]

37. During its first session from 19 to 23 February 2007, the members of the Subcommittee met with Mauro Palma, then first Vice-President (now President) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and Trevor Stevens, its Executive Secretary. The issues discussed during the meeting included possible cooperation, including systematic transmission to the Subcommittee, on a confidential basis and with the agreement of the State concerned, of visit reports and Government responses[28] of countries that are States parties to both the Optional Protocol and the European Convention for the Prevention of Torture; visits to States parties of the European Convention for the Prevention of Torture; national preventive mechanisms in States parties to the European Convention for the Prevention of Torture; consistency of standards; regular exchange of information; periodic exchanges of opinions; and assistance in the implementation of recommendations.

38. At its second session, in June 2007, the Subcommittee invited Santiago Canton, Executive Secretary of the Inter-American Commission on Human Rights, to participate in its exercise on developing working methods. This was an interesting opportunity for an exchange of views and information concerning approaches to visiting places where people are or may be deprived of their liberty, and allowed for consultation and sharing of information on the complementary work of both bodies,[29] including in relation to follow-up to and implementation of recommendations.

39. Initial talks were held in Warsaw with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. A further meeting is scheduled for June 2008.

40. In its initial period of development, the Subcommittee benefited greatly from the support of the International Committee of the Red Cross (ICRC), whose long experience as an international body operating in the field, inter alia under the Geneva Conventions, has direct relevance to the Subcommittee's work. The two treaty bodies continue to maintain a close dialogue on matters of mutual interest.

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[27] Ibid., arts. 11 (c) and 31.

[28] It is the norm for CPT visits reports and responses to be published at the request of the states concerned; the confidential nature of the visit reports and responses relates only to the period before such publication is requested by the state.

[29] In accordance with articles 11 and 31 of the Optional Protocol.

D. Civil society

41. During its first year of operation, the Subcommittee cooperated with international and national institutions and organizations[30] working towards the strengthening of the protection of all persons against torture. The Subcommittee met with many non-governmental organizations, including Amnesty International, the Association for the Prevention of Torture, the International Federation of Action by Christians for the Abolition of Torture, the Rehabilitation and Research Centre for Torture Victims (Denmark), the International Commission of Jurists and the World Organization against Torture, as well as with members of academic institutions, such as Bristol University, whose Optional Protocol Implementation Project is of particular interest to the Subcommittee.

42. The Subcommittee had regular meetings with the Association for the Prevention of Torture in Geneva; during plenary sessions of the Subcommittee, the Association organized a series of Optional Protocol receptions bringing together representatives from permanent missions and for various organizations, including non-governmental organizations working in related areas. The materials and information produced by the Association have been particularly useful in the preparation of visits.

43. During the period covered by the present report, a number of such organizations came together as the Optional Protocol Contact Group.[31] Part of their efforts was directed towards assisting the Subcommittee, in particular by providing expertise concerning national preventive mechanisms and supporting the participation of Subcommittee members in important meetings related to the Optional Protocol (see paragraph 27 above).

44. The relationship between the Optional Protocol Contact Group and the Subcommittee was formalized in February 2008, when representatives of the Group were invited to the fourth session of the Subcommittee in Geneva for an exchange of views and also organized and provided expertise for a workshop concerning national preventive mechanisms on 16 February 2008.

45. The Subcommittee welcomes the contribution made by civil society during the elaboration of the Optional Protocol, in encouraging and supporting the process of its ratification or accession, and in assisting in its implementation.

VI. ADMINISTRATIVE AND BUDGETARY MATTERS

A. Resources in 2007

46. According to article 25 of the Optional Protocol, the expenditure incurred by the Subcommittee in the implementation of the protocol is borne by the United Nations, and that the Secretary-General should provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee under the protocol.

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[30] In accordance with article 11 (c) of the Optional Protocol.

[31] See annex IX of CAT/C/40/2.

47. When the Subcommittee began its work in 2007, no funding had been approved for it to carry out its mandate, according to information provided to the Subcommittee by OHCHR management advising the Subcommittee at that time. From the outset, the Subcommittee has sought information concerning the budget available for fulfilment of its mandate, in the conviction that such information is vital for it to be able to plan its work strategically. In February 2008, the Subcommittee was provided with certain details on budgetary matters. In the interim, the Subcommittee managed to begin its work, thanks to support from the High Commissioner for Human Rights, who provided resources, including interim secretariat assistance, from extrabudgetary funds. The Subcommittee is very grateful to the High Commissioner for her strong support.

48. In the absence of a regular budget, the Subcommittee therefore worked with staff temporarily and intermittently assigned to assist it during 2007 and will continue to do so until mid-2008, when permanent staff members are due to be appointed to core posts in the Subcommittee secretariat. During its first year of operation, the Subcommittee had four acting secretaries; no staff worked continuously with the Subcommittee, apart from one person, who provided efficient secretarial and administrative help. The Subcommittee looks forward to the beneficial impact of Secretariat continuity on its capacity to fulfil its mandate as of mid-2008.

49. The need for continuity of staffing and for a core secretariat team arises from the Subcommittee's unique mandate and the nature of its work. It is important that staff remain with the Subcommittee at least through the cycle of planning and preparation for a visit, the visit itself, the dialogue following the visit and the drafting and adoption of the visit report, as well as during the process of working with developing national preventive mechanisms. The provision of staff continuity through the recruitment and appointment of a targeted secretariat assigned to support the core work of the Subcommittee would provide the additional benefit that staff going on Subcommittee visits would have previous experience of Subcommittee working methods. The Subcommittee is very grateful to the High Commissioner for agreeing in April 2007 that the Subcommittee should have a "targeted" secretariat team appointed in 2008.

B. Budget assumptions

50. The Subcommittee has been informed by OHCHR that the regular budget approved for the Subcommittee for the biennium 2008-2009 totals $925,600 (i.e., an average of slightly more than $460,000 per year) and that no extrabudgetary provision is envisaged for the Subcommittee. The assumptions on which the Subcommittee budget is based allow for four regular visits, lasting 10 days each per year and two short follow-up visits[32] of three days each; these visits are assumed to involve two Subcommittee members, two secretariat and two external experts. On this basis, the Subcommittee would not even be able to carry out a regular visit to each of the existing 34 State parties once every eight years.

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[32] As the Subcommittee on Prevention is far from visiting most States parties even for the first time, follow-up visits are not a priority at this stage.

51. The Optional Protocol provides for a minimum of two Subcommittee members on a visit. In the budget assumptions, that minimum has become the maximum. Based on Subcommittee members' experience and expertise in preventive visiting, a visit would normally require more than two members. Two external experts and two secretariat staff members would, however, be appropriate for most visits.

52. Moreover, the assumptions in the budget about expenditure for a regular visit appear to significantly underestimate the actual cost of a Subcommittee visit, and would, at best, only apply for a small country without complicating factors, such as a federal system or a large custodial population, to name but two such factors.

53. It is of particular concern to the Subcommittee that there is no specific provision within the regular budget for the Subcommittee mandate to work in direct contact with national preventive mechanisms, since existing budget lines are limited to sessions and visits. Senior OHCHR management has confirmed to the Subcommittee that there is currently no budgetary provision for the Subcommittee to work with national preventive mechanisms outside the context of its visits.

54. In the crucial early phase of the development of national preventive mechanisms, during which every State party is obliged to develop and/or maintain national preventive mechanisms, the Subcommittee considers that it must have the capacity to work with the mechanisms. If such work is confined to visits, and if the visits are made in accordance with the current budget assumptions, it will take on average 5 years for the Subcommittee to have direct contact on the spot with the mechanisms, which in some countries will have to wait 9 to 10 years. This calculation is based on the current number of 34 States parties; if the number of Optional Protocol ratifications increases, the scenario will be even worse.

55. Since the outset of the period covered by the annual report, the Subcommittee has been asked to take part in and to provide assistance for activities relating to the development of national preventive mechanisms. When the Subcommittee has requested funding for this work, it has been advised that such activities have not been approved for funding by the United Nations and that, if they are undertaken by Subcommittee members without United Nations funding, they are not official activities of the Subcommittee. The Subcommittee has decided to continue, as far as possible, to respond positively to such requests regarding national preventive mechanisms; it considers that its members undertaking such activity with the agreement of the Subcommittee are working officially on its behalf, even though members' time is donated and other costs are borne by outside sources or self-funding. In this regard, the Subcommittee has been advised that the special fund established under article 26 of the Optional Protocol could provide funding for such activities. However, the Subcommittee has always understood that the fund is intended for providing assistance to States parties and their national preventive mechanisms and to help finance implementation of the recommendations made by the Subcommittee after a visit to a State party, as well as education programmes on the mechanisms, and is therefore not available for Subcommittee work.

56. In the light of the above considerations, the Subcommittee considers that the current budget does not adequately cover the expenditure necessary for it to implement fully the Optional Protocol, and that it has not been provided with the staff, facilities and other resources necessary for the effective performance of its functions, as defined by the Optional Protocol. The Subcommittee consequently considers that it is not yet in a position to fulfil its mandate.

VII. ORGANIZATIONAL ACTIVITIES

A. Sessions of the Subcommittee

57. During the period covered by the present report, the Subcommittee held four one-week sessions: from 19 to 23 February 2007; from 25 to 29 June 2007; from 19 to 23 November 2007; and from 11 to 15 February 2008. These sessions were devoted to a number of internal activities and to planning for field activities, as well as to meeting with representatives of the permanent missions of States parties to be visited in the near future and with representatives of bodies in the United Nations system and from other organizations active in the field of prevention of ill-treatment.

58. The sessions of the Subcommittee included strategic planning and elaboration of selection criteria for the visits programme; definition of approaches to relations with States parties and national preventive mechanisms; discussion on the draft report on the Subcommittee's first visit, methods of work in the field and production of a series of materials designed to provide basic information about the Subcommittee, including an outline of a Subcommittee visit;[33] a synopsis of the Subcommittee's mandate and work[34] and an information sheet; and the preparation of the Subcommittee factFile,[35] which can be given to persons encountered on visits in order to provide a straightforward explanation about the treaty body.

59. In the course of its plenary sessions in the first year, the Subcommittee elaborated a framework for compilation of visit notes and the drafting, revising and adoption of visit reports. This process is still under review; the Subcommittee anticipates that the content of plenary sessions will change considerably over the next year as the preliminary organizational work is concluded and as the number of visits increases. In future, a greater proportion of session time will be devoted to planning visits, meeting with representatives of State parties to be visited and adopting visit reports. With the arrival of its targeted secretariat, the Subcommittee anticipates adopting on average three reports per session. The Subcommittee drafted its first annual report, however, owing to timing issues related to resources, the report was adopted outside the sessions of the Subcommittee.

B. Rules of procedure and guidelines on visits

60. Early sessions of the Subcommittee focused on developing and adopting certain key internal working documents, including rules of procedure and guidelines on visits. The Subcommittee conceives of the latter as a working document for ongoing review and development, as part of the process of refining its working methods.

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[33] See annex V of CAT/C/40/2.

[34] See annex VI of CAT/C/40/2.

[35] See annex VII of CAT/C/40/2.

C. Development of working methods

61. The Subcommittee considers the development of working methods an essential part of its ongoing activities. It is axiomatic that, at the outset of the establishment of a new treaty body with a unique mandate, this merits particular attention. The Subcommittee's field of work is complex and constantly evolving, with issues of major significance arising during the course of the empirical work, necessitating careful consideration by the entire membership of the Subcommittee. The limited time frame of the plenary sessions does not allow for thorough and focused discussion. The Subcommittee has found it necessary to incorporate an element of this developmental work into its short sessions by extending the core five-day period by a half to one day during the weekend before or after each session.

62. The Subcommittee has been supported in the process of developing its working methods by a number of organizations working in the field. The ICRC organized and provided training staff at its training centre for a two-day exercise focusing on preparing and carrying out visits. The second two-day exercise, also held at the ICRC training centre and partly funded by OHCHR, focused on visiting police facilities and working with national preventive mechanisms and included contributions from Santiago Canton, Executive Secretary of the Inter-American Commission on Human Rights, Mark Kelly, who has worked as a United Nations expert and former head of unit of the secretariat of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and staff members from the Association for the Prevention of Torture. A third exercise lasting for half a day was organized by the Optional Protocol Contact Group as a workshop concerning national preventive mechanisms.

63. The Optional Protocol provides that Subcommittee members may be accompanied on visits by experts of demonstrated professional experience and knowledge to be selected from a roster prepared on the basis of proposals made by the States parties, OHCHR and the Centre for International Crime Prevention.[36] To date, only a minority of States parties have provided proposals for the roster from which the Subcommittee selects external experts for visits; the Subcommittee has requested State parties who have not already done so to make proposals for the roster of experts, bearing in mind the need for relevant expertise and independence. The first visit, to Mauritius, did not involve any external experts, owing to administrative problems; on the second visit, to the Maldives, however, two external experts accompanied the delegation (R. Vasu Pillai and Mark Kelly) and one external expert (Avetik Ishkhanyan) came on the third visit, to Sweden.

D. Confidentiality and secure communications

64. In the light of the need for strict confidentiality of certain information arising out of the Subcommittee's unique mandate and the sensitivity of certain information, documents and meetings, security of data has been a longstanding issue for the Subcommittee. Having raised at the very outset its concerns about confidentiality for the protection of persons at risk, the Subcommittee continued its efforts over the course of the year to obtain arrangements for the security of meetings during its session; of stored information and documents during and between

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[36] Article 13, paragraph 3, of the Optional Protocol.

sessions; of information on and plans for visits; of a range of aspects of Subcommittee work during visits; and of secure communications after visits in order to ensure the safe discussion and exchange of data used in the production of visit reports and other documents.

65. In November 2007, staff of OHCHR provided the Subcommittee with access to a secure web facility (Extranet) as an interim measure, and, in January 2008, with temporary access to an encrypted and password-protected FTP site pending further development of a secure Internet site. The Subcommittee is grateful that it is now able to exchange information under conditions of confidentiality more commensurate with the nature of its work.

VIII. CONCLUSIONS

66. At this initial stage in its work, the Subcommittee wishes to assess the series of challenges to be met and overcome in order that it may fulfil the role set out for it in the Optional Protocol.

67. The Subcommittee differs from other treaty bodies of the United Nations, in that its core work is in the field and consists not only in visits to States parties to the Optional Protocol, but also in giving advice and assistance to those States and in providing advice and technical assistance, including training, to national preventive mechanisms, with a view to reinforcing the protections of persons deprived of their liberty against torture and other ill-treatment. The Subcommittee has proceeded in its initial year to look for ways to focus on these different, but equally important, elements of its mandate. As the existing resources provided by the United Nations to the Subcommittee in the reporting period only cover meetings in Geneva and preventive visits to States parties, Subcommittee members have had to look creatively beyond the United Nations in order to carry out work to support the development of national preventive mechanisms. They have done this primarily through participation in initiatives organized and funded by academic and international human rights organizations at the regional and subregional levels. However, in the long run, it is not appropriate that the Subcommittee's ability to fulfil this vital part of its mandate should depend solely, as it currently does, upon outside resources and support.

68. The full mandate clearly envisaged in the Optional Protocol has not yet been realized in practice owing to limited budgetary and human resources, a situation which might not be uncommon during the initial phase of operations of a new body, but which must be resolved fully and permanently for the next phase of work. The Subcommittee looks to the United Nations to provide the financial and human resources necessary for it to fulfil all elements of its mandate under the Optional Protocol.

Annex VIII

JOINT STATEMENT ON THE OCCASION OF THE UNITED NATIONS INTERNATIONAL DAY IN SUPPORT OF VICTIMS OF TORTURE

Six United Nations entities regularly involved with issues relating to the prevention of torture and helping its victims have said that, despite a strong international legal framework outlawing torture, much remains to be done "to ensure that everybody is free of this scourge", and urged that special attention be paid to ensure better protection for women.

The United Nations High Commissioner for Human Rights joins in with the following human rights entities and experts on the statement marking the United Nations International Day in Support of Victims of Torture.

The other five signatories of the statement are: The Committee against Torture, the Subcommittee on Prevention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.

"2008 is the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, the foundation of international human rights law, which in article 5 states that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Successive human rights treaties have built on this provision. However, despite the comprehensive legal framework to confront torture, six decades after the Universal Declaration much remains to be done to ensure that everybody is free of this scourge.

"The adoption of the Universal Declaration sent a clear and unequivocal message - that dignity and justice were for all, including of course for women. Sixty years on, we call upon States to reaffirm their resolve to ensure that the torture protection framework is applied in a gender-sensitive manner, to help to end violence against women; to ensure that mechanisms and targeted efforts are put in place to prevent, investigate and punish acts of violence against women; and to provide full access to justice and effective remedies, including health services and rehabilitation for the harm they have suffered.

"Women fall victim to torture in different ways, as highlighted by the Secretary-General Ban Ki-moon's global campaign to end violence against women, launched in February 2008, and by other recent initiatives concerning violence against women, such as United Nations Action against Sexual Violence in Conflict. Certain forms of gender-specific violence perpetrated by State actors, as well as by private individuals or organizations, clearly amount to torture, and it is now recognized that gender-specific violence falls within the definition of torture in the Convention against Torture. The global campaign to end violence against women, when viewed through the prism of the international legal framework prohibiting torture, can be strengthened: there needs to be a broader scope of prevention, protection, justice and reparation for victims, including access to international assistance, than currently exists.

"Women deprived of their liberty are particularly vulnerable to sexual violence, which often carries with it a strong stigma exacerbating the suffering stemming from the violent acts. Female detainees also have a number of special needs and face specific challenges that must be taken into account in all protection and prevention efforts.

"Persons with disabilities have also often found themselves excluded from the protection afforded under international instruments. Therefore the entry into force, on 3 May 2008, of the Convention on the Rights of Persons with Disabilities and its Optional Protocol is particularly welcome. The Convention not only reaffirms the right of all to be free from torture, cruel, inhuman, degrading treatment or punishment, but requires States parties to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to these repellent practices.

"On this International Day in Support of Victims of Torture, we again pay tribute to all Governments, civil society organizations, national human rights institutions and individuals engaged in activities aimed at preventing torture, punishing it and ensuring that all victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. We express our gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture. We call on all States, in particular those which have been found to be responsible for widespread or systematic practices of torture, to contribute to the Voluntary Fund as part of a universal commitment for the rehabilitation of torture victims.

"Finally, we urge all States to join the 34 that have so far ratified the Optional Protocol to the Convention against Torture, and subsequently to engage with the Subcommittee on Prevention."

Annex IX

OVERDUE REPORTS

State party	*Date on which the report was due*	*Revised date*[a]
Initial reports		
Guinea	8 November 1990	
Somalia	22 February 1991	
Seychelles	3 June 1993	
Cape Verde	3 July 1993	
Antigua and Barbuda	17 August 1994	
Ethiopia	12 April 1995	
Côte d'Ivoire	16 January 1997	
Malawi	10 July 1998	
Bangladesh	4 November 1999	
Niger	3 November 1999	
Burkina Faso	2 February 2000	
Mali	27 March 2000	
Turkmenistan	25 July 2000	
Mozambique	14 October 2000	
Ghana	6 October 2001	
Botswana	7 October 2001	
Gabon	7 October 2001	
Lebanon	3 November 2001	
Sierra Leone	25 May 2002	
Nigeria	28 June 2002	
Saint Vincent and the Grenadines	30 August 2002	
Lesotho	11 December 2002	
Mongolia	23 February 2003	
Ireland	11 May 2003	
Holy See	25 July 2003	
Equatorial Guinea	7 November 2003	
Djibouti	5 December 2003	
Timor-Leste	16 May 2004	
Congo	30 August 2004	
Swaziland	25 April 2005	

State party	*Date on which the report was due*	*Revised date*[a]
Maldives	20 May 2005	
Liberia	22 October 2005	
Syrian Arab Republic	19 September 2005	
Mauritania	17 December 2005	
Madagascar	13 January 2007	
Andorra	22 September 2007	
San Marino	28 November 2007	
	Second periodic reports	
Afghanistan	25 June 1992	
Belize	25 June 1992	
Uganda	25 June 1992	[25 June 2008]
Togo	17 December 1992	[17 December 2008]
Guyana	17 June 1993	[31 December 2008]
Brazil	27 October 1994	
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Yemen	4 December 1996	
Jordan	12 December 1996	
Bosnia and Herzegovina	5 March 1997	[5 March 2009]
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Cambodia	13 November 1997	
Burundi	19 March 1998	[31 December 2008]
Antigua and Barbuda	17 August 1998	
Ethiopia	12 April 1999	
Albania	9 June 1999	[9 June 2007]
Namibia	27 December 1999	
Tajikistan	9 February 2000	[31 December 2008]
Cuba	15 June 2000	
Chad	9 July 2000	
Moldova	27 December 2000	[27 December 2004]
Côte d'Ivoire	16 January 2001	
Democratic Republic of the Congo	16 April 2001	[16 April 2009]
Kuwait	6 April 2001	
Malawi	10 July 2002	
Honduras	3 January 2002	
Kenya	22 March 2002	

State party	*Date on which the report was due*	*Revised date*[a]
Kyrgyzstan	4 October 2002	
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[4 April 2007]
Bangladesh	3 November 2003	
Niger	3 November 2003	
South Africa	8 January 2004	[31 December 2009]
Burkina Faso	2 February 2004	
Mali	27 March 2004	
Bolivia	11 May 2004	
Turkmenistan	24 July 2004	
Japan	29 July 2004	[30 June 2011]
Mozambique	13 October 2004	
Qatar	10 February 2004	[10 February 2005]
Botswana	7 October 2005	
Gabon	8 October 2005	
Lebanon	5 October 2005	
Ghana	18 December 2005	
Sierra Leone	25 May 2006	
Nigeria	28 July 2006	
Saint Vincent and the Grenadines	31 August 2006	
Lesotho	12 December 2006	
Mongolia	23 February 2007	
Bahrain	4 April 2003	[4 April 2007]
Ireland	11 May 2007	
Albania	9 June 2007	
Holy See	25 July 2007	
Equatorial Guinea	7 November 2007	
Djibouti	5 December 2007	
Timor Leste	16 May 2008	

Third periodic reports

Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	
Senegal	25 June 1996	
Uruguay	25 June 1996	

State party	*Date on which the report was due*	*Revised date*[a]
Turkey	31 August 1997	[31 August 2005]
Tunisia	22 October 1997	[30 November 1999]
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[1 December 2000]
Liechtenstein	1 December 1999	
Romania	16 January 2000	
Nepal	12 June 2000	[12 June 2008]
Serbia	3 September 2000	
Yemen	4 December 2000	
Jordan	12 December 2000	
Bosnia and Herzegovina	5 March 2001	[5 March 2009]
Benin	10 April 2001	[30 December 2011]
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	
Slovakia	27 May 2002	
Antigua and Barbuda	17 August 2002	
Armenia	12 October 2002	
Costa Rica	10 December 2002	[30 June 2012]
Sri Lanka	1 February 2003	[1 February 2007]
Ethiopia	12 April 2003	
The former Yugoslav Republic of Macedonia	11 December 2003	[30 June 2012]
Namibia	27 December 2003	
Republic of Korea	7 February 2004	[7 February 2012]
Cuba	15 June 2004	
Chad	9 July 2004	
Côte d'Ivoire	16 January 2005	
Lithuania	1 March 2005	
Kuwait	5 April 2005	
Democratic Republic of the Congo	16 April 2005	[16 April 2009]
El Salvador	16 July 2005	
Honduras	3 January 2006	

State party	*Date on which the report was due*	*Revised date*[a]
Kenya	22 March 2006	
Malawi	10 July 2006	
Slovenia	14 August 2006	
Kazakhstan	24 September 2007	
Kyrgyzstan	4 October 2006	
Saudi Arabia	20 October 2006	
Bangladesh	3 November 2007	
Niger	3 November 2007	
Zambia	6 November 2007	[30 June 2012]
Indonesia	27 November 2007	[30 June 2012]
Burkina Faso	2 February 2008	
Bolivia	10 May 2008	

Fourth periodic reports

State party	*Date on which the report was due*	*Revised date*[a]
Afghanistan	25 June 2000	
Belarus	25 June 2000	
Belize	25 June 2000	
France	25 June 2000	[25 June 2008]
Philippines	25 June 2000	
Senegal	25 June 2000	
Uruguay	25 June 2000	
Austria	27 August 2000	[31 December 2008]
Panama	22 September 2000	
Ecuador	28 April 2001	[28 April 2009]
Tunisia	22 October 2001	
Libyan Arab Jamahiriya	14 June 2002	
Algeria	11 October 2002	[20 June 2012]
Brazil	27 October 2002	
Guinea	8 November 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Liechtenstein	1 December 2003	
Romania	16 January 2004	
Nepal	12 June 2004	[12 June 2008]
Bulgaria	25 June 2004	[25 June 2008]
Cameroon	25 June 2004	
Cyprus	16 August 2004	
Bolivarian Republic of Venezuela	20 August 2004	
Croatia	7 October 2004	[7 October 2008]

State party	*Date on which the report was due*	*Revised date*[a]
Serbia	3 September 2004	
Estonia	19 November 2004	[30 December 2011]
Yemen	4 December 2004	
Jordan	12 December 2004	
Austria	31 December 2004	[31 December 2008]
Monaco	4 January 2005	[4 January 2009]
Bosnia and Herzegovina	5 March 2005	[5 March 2009]
Benin	10 April 2005	
Cape Verde	3 July 2005	
Cambodia	13 November 2005	
Czech Republic	31 December 2005	[31 December 2009]
Mauritius	7 January 2006	
Slovakia	27 May 2006	
Morocco	20 July 2006	
Antigua and Barbuda	17 August 2006	
Armenia	12 October 2006	
Sri Lanka	1 February 2007	[1 February 2007]
Ethiopia	12 April 2007	
Bangladesh	4 November 2007	
Georgia	24 November 2007	[24 November 2011]
Namibia	27 December 2007	
Burkina Faso	2 February 2008	
Republic of Korea	7 February 2008	[7 February 2012]

Fifth periodic reports

Afghanistan	25 June 2004	
Argentina	25 June 2004	[25 June 2008]
Belarus	25 June 2004	
Belize	25 June 2004	
Egypt	25 June 2004	
France	25 June 2004	[25 June 2008]
Hungary	25 June 2004	[31 December 2010]
Mexico	25 June 2004	[31 December 2010]
Philippines	25 June 2004	
Russian Federation	25 June 2004	[31 December 2010]
Senegal	25 June 2004	
Switzerland	25 June 2004	[25 June 2008]
Uruguay	25 June 2004	
Austria	27 August 2004	[31 December 2008]
Panama	27 September 2004	

State party	*Date on which the report was due*	*Revised date*[a]
Colombia	6 January 2005	
Ecuador	25 April 2005	[28 April 2009]
Greece	4 November 2005	[4 November 2009]
China	2 November 2005	
Libyan Arab Jamahiriya	14 June 2006	
United States of America	19 November 2005	[19 November 2011]
United Kingdom of Great Britain and Northern Ireland	6 January 2006	[6 January 2008]
Portugal	10 March 2006	[30 December 2012]
Finland	28 September 2006	
Brazil	27 October 2006	
Guinea	8 November 2006	
Somalia	22 February 2007	
Paraguay	10 April 2007	
Tunisia	22 October 2007	
Liechtenstein	11 December 2007	
Romania	16 January 2008	

Note

[a] The date indicated in brackets is the revised date for submission of the State party report, in accordance with the Committee's decision at the time of adoption of recommendations regarding the last report of the State party.

Annex X

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS THIRTY-NINTH AND FORTIETH SESSIONS (IN ORDER OF EXAMINATION)

A. Thirty-ninth session

Report	*Rapporteur*	*Alternate*
Latvia: second periodic report (CAT/C/38/Add.4)	Mr. Grossman	Ms. Sveaass
Uzbekistan: third periodic report (CAT/C/UZB/3)	Ms. Gaer	Mr. Kovalev
Norway: fifth periodic report (CAT/C/81/Add.4)	Mr. Mariño Menendez	Mr. Wang
Estonia: second periodic report (CAT/C/55/Add.11)	Ms. Sveaass	Mr. Kovalev
Portugal: fourth periodic report (CAT/C/67/Add.6)	Mr. Mariño Menendez	Mr. Camara
Benin: second periodic report (CAT/C/BEN/2)	Ms. Belmir	Mr. Gallegos

B. Fortieth session

Australia: third periodic report (CAT/C/44/Add.8)	Mr. Mariño Menendez	Mr. Gallegos
Sweden: fifth periodic report (CAT/C/SWE/5)	Mr. Grossman	Mr. Wang
Algeria: third periodic report (CAT/C/DZA/3)	Mr. Grossman	Ms. Belmir
Costa Rica: second periodic report (CAT/C/CRI/2)	Ms. Sveaass	Mr. Gallegos
Indonesia: second periodic report (CAT/C/72/Add.1)	Ms. Gaer	Mr. Grossman
The former Yugoslav Republic of Macedonia: second periodic report (CAT/C/MKD/2)	Mr. Gallegos	Ms. Sveaass
Zambia: second periodic report (CAT/C/ZMB/2)	Mr. Mariño Menendez	Mr. Kovalev

Annex XI

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 269/2005

Submitted by:	Mr. Ali Ben Salem (represented by counsel)
Alleged victim:	The complainant
State party:	Tunisia
Date of complaint:	2 May 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 November 2007,

Having concluded its consideration of complaint No. 269/2005, submitted in the name of Mr. Ali Ben Salem under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Ali Ben Salem, a 73-year-old Tunisian national. He alleges he was the victim of violations by Tunisia of article 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 11, 12, 13 and 14, read separately or in conjunction with article 16, paragraph 1, of the Convention. He is represented by counsel.

Factual background as presented by the complainant

2.1 The complainant has a long history of human rights activism in Tunisia, where, over the past 24 years, he has helped set up and run human rights monitoring organizations. In 1998, he co-founded the National Council for Fundamental Freedoms in Tunisia (CNLT), which the Tunisian Government refused to register as a legal non-governmental organization (NGO) and kept under constant surveillance. In 2003, he co-founded the Tunisian Association against Torture (ATLT). He and his colleagues have been subjected to harassment, threats and violence by the Tunisian Government.

2.2 In March 2000, CNLT published a report setting out in detail all the systematic human rights violations committed by the Tunisian Government, including acts of torture. On 3 April 2000, Mr. Ben Brik, a journalist and friend of the complainant, began a hunger strike in protest against the withdrawal by the Tunisian authorities of his passport, constant police harassment and a boycott of his work by the Tunisian media. On 26 April 2000 the complainant went to visit Mr. Ben Brik and noticed a large number of people around the house. Among them he recognized several plain-clothes policemen, some of whom had been involved in the surveillance and numerous closures of CNLT offices. These policemen prevented foreign journalists from approaching Mr. Ben Brik's house. The complainant tried to flee, but was struck on the back of the neck, and partially lost consciousness. Other people were also beaten and arrested by the police.

2.3 Along with the others, the complainant was brought to El Manar 1 police station, where he was hit many times on the back of the head and neck and was kicked by several officers. He was subsequently dragged 15 metres along the courtyard face down and up a flight of stairs leading to the police station. His clothes were torn and he was left with abrasions on his lower body. He continued to be beaten, in particular by one policeman who he later learned was Mr. Abdel Baqui Ben Ali. Another officer sprayed tear gas in his face, which burned his eyes and choked him. A policeman banged his head against a wall, leaving him unconscious for an undetermined period. When he came to, he found himself in a puddle of water on the floor of the main hall of the police station. He asked to be taken to the toilet, as he felt prostate pain, a condition which he had suffered from for several years. When the policemen refused, he was obliged to drag himself along the floor to the toilets.

2.4 A little later, he was told to go to an office a few metres further on. He was once again obliged to drag himself along the floor. Three police officers tried to force him to sit on a chair. He was then hit on the back of the neck and briefly lost consciousness. When he came to, he realized that he was being thrown in the back of a car, then fainted from pain. He was dumped at a construction site. He was discovered there in the late afternoon by three workers who found him a taxi to take him to hospital. At the hospital, medical tests confirmed that he had severe injuries to the spine, head injuries and bruises. Despite the doctors' concern, for fear of the police he decided as early as the next day to leave hospital and return to his home in Bizerte. Ever since he has suffered from serious back problems and has had difficulty standing up, walking and even carrying small objects. Doctors have advised back surgery. He also suffers from shoulder injuries. Because he cannot afford surgery, he has to take painkillers.

2.5 On 20 June 2000 the complainant lodged a complaint with the office of the Public Prosecutor describing the ill-treatment to which he had been subjected by policemen at El Manar 1 police station, requesting the Public Prosecutor to open a criminal investigation into the incident and implicating the Ministers of the Interior and of National Security. The Public Prosecutor's office would not accept the complaint, on the grounds that it was not the two Ministers themselves who had mistreated the complainant. On 22 August 2000 the complainant mailed his complaint back to the Public Prosecutor's office. On 4 September 2000 he delivered it to the office in person. He received no reply. No investigation has been opened since.

2.6 The applicant has been subjected to nearly constant police surveillance since 26 April 2000. Plain-clothes policemen are nearly always posted in front of his home. His telephone line is often cut, and he suspects that the police have tapped it. He was again assaulted by police officers on 8 June 2004 when he tried to register the organization that he had co-founded, ATLT.

The complaint

3.1 The complainant alleges a violation of article 2, read in conjunction with article 1, of the Convention, on the grounds that the State party not only failed in its obligation to take effective measures to prevent acts of torture, but also used its own police forces to subject him to such acts. The State party intentionally inflicted on the complainant treatment tantamount to torture with the aim of punishing him for his human rights activities and intimidating him into halting such activities. He notes that the seriousness of the ill-treatment is comparable to that of other cases where the Committee has found that the ill-treatment constituted torture under article 1.[a] Furthermore, the gravity of the ill-treatment must be assessed taking into account the victim's age, his state of health and the resulting permanent physical and mental effects of the ill-treatment. He points out that at the time of the incidents he was 67 years old and suffered from prostate problems.

3.2 The complainant considers that the State party violated article 11, on the grounds that the authorities not only failed to exercise their supervisory powers to prevent torture, but actually resorted to torture themselves. The State party thus clearly failed to exercise a systematic review of rules, instructions, methods and practices with a view to preventing any cases of torture.

3.3 The complainant alleges that he has been a victim of a violation of articles 12 and 13 taken together, on the grounds that the State party did not carry out an investigation into the acts of torture committed against him, despite abundant evidence that public officials had perpetrated such acts. He filed complaints, and several international organizations made official statements mentioning his case and describing the ill-treatment inflicted by the Tunisian police. He further notes that according to the Committee's case law, a mere allegation of torture by the victim is sufficient to require an investigation by the authorities.[b]

3.4 With respect to the alleged violation of article 13, the complainant points out that the State party has not discharged its duty to protect him against all ill-treatment or intimidation as a consequence of his complaint. On the contrary, he considers that the State party has exposed him to intimidation by its own police force. He also points out that since the events in question he has been under nearly constant surveillance by the Tunisian police.

3.5 With respect to the alleged violation of article 14, the complainant considers that the State party has ignored his right to file a complaint, and has thus deprived him of his right to obtain compensation and the means for his rehabilitation. Even if civil suits may theoretically afford adequate reparation for victims of torture, they are either unavailable or inadequate. Under article 7 of the Tunisian Code of Criminal Procedure, when a complainant chooses to bring both civil and criminal actions, judgement cannot be handed down in the civil suit until a definitive decision has been reached on the criminal charges. Since criminal proceedings were never begun in this case, the State party has denied the complainant the opportunity to claim civil damages. If the complainant brings a civil suit without any criminal proceedings being initiated, he must renounce any future criminal charges. Thus, even if he won his case, the limited compensation that resulted would be neither fair nor appropriate.[c]

3.6 With respect to the alleged violation of article 16, the complainant argues that while the ill-treatment he suffered may not qualify as torture, it does constitute cruel, inhuman or degrading treatment.

3.7 On the exhaustion of domestic remedies, the complainant points out that he has unsuccessfully tried all the remedies available under Tunisian law. He has tried three times to file a complaint with the Public Prosecutor's office (see paragraph 2.5 above). He has received no response to his complaints, although they were submitted in 2000. He notes the Committee's finding that allegations of torture are of such gravity that, if there is reasonable ground to believe that such an act has been committed, the State party has the obligation to proceed automatically to a prompt and impartial investigation.[d] In such cases, the victim need only bring the matter to the attention of the authorities for the State to be under such an obligation.[e] In the present case, not only did the complainant report the matter, but international organizations have also publicly decried the brutality to which he was subjected.

3.8 In the complainant's opinion, five years of inaction by the Public Prosecutor after a criminal complaint is submitted is an unreasonable and unjustifiable amount of time. He points out that the Committee has regarded a period of several months between the time the competent authority is informed of alleged torture and the time a proper investigation begins as excessive.[f] There is no effective remedy available to torture victims in Tunisia, because other appeal procedures are in practice flawed. A complainant can bring a private suit if the Public Prosecutor does not wish to initiate proceedings, but by so doing he forfeits the opportunity subsequently to seek criminal damages. The Committee has considered failure to bring proceedings to be an "insurmountable obstacle", since it made it very unlikely that the victim would receive compensation.[g] He notes that prosecutors do not investigate allegations of torture and abuse, and that judges regularly dismiss such complaints without investigating them. Thus, while appeal procedures exist in theory, in practice they are unsatisfactory.[h]

3.9 The complainant requests the Committee to recommend to the State party that it take steps to investigate fully the circumstances of the torture he underwent, communicate the information to him and, based on the findings of the investigation, take action, if warranted, to bring the perpetrators to justice. He also requests that the State party take whatever steps are necessary to grant him full and suitable compensation for the injury he has suffered.

State party's observations on admissibility

4.1 The State party forwarded its observations on the admissibility of the complaint on 21 October 2005. It objects that the communication is inadmissible because the complainant has neither used nor exhausted the domestic remedies available, which, contrary to his assertions, are effective. The State party points out that the complainant did not follow up on his complaint. On 4 September 2000, the very day that the complaint was filed with the lower court in Tunis, the Deputy Public Prosecutor invited the complainant, in writing, to produce a medical certificate attesting to the alleged bodily harm cited in his complaint; the complainant did not submit such a certificate. Even so, the Public Prosecutor asked the chief of the security service for the Tunis district to proceed with the necessary investigation of the related facts and report back to him. On 17 April 2001, the chief of the security service for the Tunis district stressed that the facts as related by the complainant had not been established but investigations were still under way. On the same dates and in the same places, on the other hand, the police had stopped and arrested people at an unauthorized gathering on the public highway. On the basis of that information, the Public Prosecutor assigned a deputy to question the persons cited in the complaint - the three policemen and the complainant. Questioned on 12 July 2001, 13 November 2001 and 11 July 2002 respectively, the three defendants all denied the facts as related by the complainant. One said he could not have been at the scene of the alleged incident because he was assigned to a different district. The other two had been at the scene of the unauthorized gathering but had been taken to hospital after being assaulted by a demonstrator. Faced with the complainant's failure to respond, the Tunis prosecutor's office decided on 29 May 2003 to bring the alleged victim face-to-face with the three police officers. It assigned the office of the chief of the security service for the Tunis district to summon the complainant and ask him for contact details of the witnesses he cited in his complaint. That request was not followed up because the complainant was not at the address given in the initial complaint. The Deputy Public Prosecutor therefore decided on 12 June 2003 to file the case without further action, for lack of evidence.

4.2 The State party points out that the allegations made by the complainant relate to acts that qualify as crimes under Tunisian law, action on which is time-barred only after 10 years. The complainant can, therefore, still lodge an appeal. The State party stresses that the complainant has offered no serious reason for his failure to take action despite the legal and practical opportunities open to him to bring his case before the national courts. He can contest the Public Prosecutor's decision to file the case without further action, having the inquiry brought before an examining magistrate, or he can summon the defendants directly before the Criminal Division of the High Court under article 36 of the Code of Criminal Procedure. He can combine a civil application for compensation with the criminal proceedings, or await a conviction, then bring a separate civil suit for damages before the civil courts alone. The complainant can also file an administrative appeal, since public officials who commit serious misconduct render the State liable along with themselves. An appeal of this kind is still possible, since the limitation period for compensation appeals is 15 years. The State party asserts that domestic remedies are effective but the complainant has not made intelligent use of them. It cites numerous examples to show that appeals to the Tunisian justice system in similar cases have been not only possible, but effective.

4.3 Because of the complainant's political motivations and the slanderous content of the communication, the State party considers that he has abused the right to submit communications under article 22, paragraph 2, of the Convention. It points out that the complainant is a founder member of two groups that are not legally recognized in Tunisia, CNLT and ATLT, which continue to operate outside the law and are constantly adopting disparaging positions aimed at discrediting the country's institutions. It notes that the complainant has levelled serious defamatory accusations against the Tunisian judicial authorities that are in actual fact not supported by any evidence.

Complainant's comments on the State party's observations

5.1 On 21 November 2005 the complainant reaffirmed that he had made use of the domestic remedies provided under Tunisian law, despite the fact that they were ineffective. He had done more than should be expected to have the incidents investigated and judged at the national level, since he had taken all the steps that should have led to a serious inquiry. The obligation to undertake an investigation lay with the State even in the absence of any formal procedural action on the part of the victim. In any case, he had gone in person to the offices of the competent authorities to submit his complaint after trying to complain twice before. No notification, summons or instruction had been sent to him, and no information on the status of his case had been communicated to him. He therefore considered that he had not been remiss as far as following up on his complaint was concerned. The State party bore sole responsibility for conducting the inquiry. Even if the complainant had not shown due diligence, the State party would be under the same obligation. The Committee had stated that a lack of action on the part of the victim could not excuse failings by the State party in the investigation of accusations of torture.[i]

5.2 The complainant considers that his complaint was unproductive since he had never been informed of any follow-up to it. He notes that none of the records, letters and other communications concerning the investigation which the State party mentions have been produced by the State party in its response to his communication; and in any event, they cannot be considered to amount to a full, impartial investigation as required by article 12 of the Convention. As for the fact that he did not receive the summons issued in June 2003 because he was not at home, he argues that absence from his home on one occasion is not a valid reason to exclude him entirely from the proceedings. As for medical certificates, even if the Public Prosecutor in September 2000 did issue a request - which was never received - asking him to present such documents, no further attempt to obtain them was made thereafter. He notes that the chief of the security service for the Tunis district reached the provisional conclusion in his message of 17 April 2001, seven months after the inquiry supposedly started, that the facts as related had not been established, and did so without hearing any witnesses, the complainant or the defendants, or seeing any medical certificates. Of the three defendants, the first was questioned more than a year after the incident and the last, more than two years after it although the criminal investigation service could easily get in touch with them all. The complainant further notes that the State party reports, without giving further details, that the three defendants denied the facts, and that there is no indication that their statements were subsequently checked. He considers that the authorities have not conducted a prompt, serious, exhaustive and impartial investigation.

5.3 The complainant considers that the other domestic remedies mentioned by the State party are equally ineffective, and that he therefore does not need to pursue them to satisfy article 22, paragraph 5 (b), of the Convention. With regard to seeking remedy through criminal proceedings, he mentions that he has run up against several obstacles as already described, including the absence of a decision by the Public Prosecutor not to bring a prosecution. Furthermore, if an investigation begun by institution of a civil suit results in a dismissal of proceedings, the complainant may be held civilly and criminally liable, and this deters action. Regarding a possible civil remedy, he points out that under article 7 of the Code of Criminal Procedure, civil suits are dependent and contingent upon the criminal proceedings; yet in practice, criminal proceedings are not an available option. As regards an administrative appeal, he says that a favourable outcome is no more likely in the administrative tribunal than it would be in the criminal courts, and the outcome of his attempt to bring criminal charges is a good indicator of how administrative litigation would probably end. Furthermore, he considers that by their very nature, neither civil nor administrative proceedings can guarantee full and appropriate reparation in a case of torture: only a criminal remedy for such a violation of the fundamental rights of the person is appropriate.

5.4 As regards the argument that his communication constitutes an abuse of the right to submit communications to the Committee, the complainant states that he has merely exercised his right to an effective remedy, that he has no political motivations and has made no defamatory statements against the State party. He notes that the Committee has found that a complainant's political commitment does not impede consideration of his complaint.[j]

Additional observations by the parties

6.1 On 26 April 2006 the State party reiterated that the complainant had, since the alleged assault, been blatantly negligent, not least insofar as it had taken over four months for him to file his complaint, he had not enclosed a medical certificate, and he had not given sufficient details concerning the policemen he accused and the witnesses he cited. Besides those major omissions, the complainant had been remiss in following up on the investigation, since at no time after submitting his complaint had he taken the trouble to enquire about the outcome or follow it up. His attitude indicated bad faith and a deliberate intention to make the appeal procedure appear ineffective. The Public Prosecutor, on the other hand, had shown exceptional diligence, considering that complaints not supported by strong evidence are generally filed with no further action. In this case, the Public Prosecutor had examined the complaint the very day it had been submitted; he had noted the absence of a medical certificate and had opted to give the complaint a chance by asking the complainant to supply one. Despite the paucity of evidence, he had on his own initiative undertaken an investigation into the facts as related by the complainant. Despite this diligence, the absence of the complainant from his home, observed on numerous occasions, had seriously hampered the collection of reliable information.

6.2 Regarding the absence of information on the status of the case, the State party explains that the Code of Criminal Procedure calls for no special procedures to notify or inform the complainant when a complaint is filed, and that it is customary and logical for the complainant himself to follow the case. As for the argument that the complainant may be held criminally and civilly liable in the event that proceedings are dismissed in an application for civil indemnities, the State party explains that such a risk exists only if slanderous accusations have been made. On the matter of evidence, it emphasizes that its comments are based entirely on official documents in the case file.

7. On 10 May 2006 the complainant again asserted that he had been diligent and had persevered in his attempts to file a complaint, and the ineffectiveness of the legal steps he had taken was in no way attributable to his conduct. He added that he did not actually have any alternative legal course affording reasonable prospects of satisfaction.

Decision of the Committee on admissibility

8.1 The Committee considered the question of the admissibility of the complaint at its thirty-seventh session and, in a decision dated 8 November 2006, pronounced it admissible.

8.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.3 The State party had requested the Committee to declare the complaint inadmissible on the grounds that the complainant had abused the right to submit such a communication and had not exhausted all available domestic remedies. The complainant for his part contested the arguments put forward by the State party, asserting not only that his submission to the Committee was not abusive, but also that his approaches to the Tunisian authorities stood no chance of success.

8.4 On the question of abuse raised by the State party, the Committee pointed out that in order for there to be abuse of the right to raise a matter before the Committee under article 22 of the Convention, one of the following conditions must be met: the submission of a matter to the Committee must amount to malice or a display of bad faith or intent at least to mislead, or be frivolous; or the acts or omissions referred to must have nothing to do with the Convention. In the present case, however, it had been ascertained that the complainant had reported being tortured and/or ill-treated by policemen in the street or at a police station, and had accused the State party of violating provisions of the Convention.

8.5 Regarding the contention that the complaint should not be entertained owing to the failure to exhaust domestic remedies, while taking into consideration the State party's description of its legal and court system, the Committee noted that the incident in question had taken place on 26 April 2000 at El Manar 1 police station; that the only investigations had been conducted by the chief of the security service of the Tunis district and by the Public Prosecutor, who had eventually filed the complaint with no further action; that by the date the complaint was submitted to the Committee against Torture, 6 July 2005 (over five years after the incident), no substantive decision had been reached; and that that was an abnormally long delay before dealing with extremely serious acts which qualify as crimes attracting severe penalties under Tunisian law. In the light of the above, the Committee considered that the requirements of article 22, paragraph 5, of the Convention, had been met.

8.6 The Committee against Torture therefore decided that the communication was admissible in respect of articles 2, paragraph 1, read in conjunction with 1; 16, paragraph 1; 11, 12, 13 and 14, read separately or in conjunction with 16, paragraph 1.

State party's observations

9.1 On 2 March 2007 the State party repeated that no provision of the Convention had been violated and expressed surprise that the Committee should have found the complaint admissible. It points out that a complaint to the Committee should not allow the complainant to evade the consequences of his own negligence and his failure to exhaust available domestic remedies.

9.2 The Committee had found that no substantive decision had been reached more than five years after the complainant had complained to the authorities, but the State party stresses that it was several serious omissions on the part of the complainant that had led the Public Prosecutor to file the case: failure to attach a medical certificate or provide sufficient details about the policemen accused and the witnesses cited, and failure to follow up on his complaint. The absence of convincing evidence and details of the full names and addresses of witnesses, in addition to the accused's denial of the facts as related by the complainant, made it impossible to take a decision on the substance of the complaint.

9.3 The State party believes it has explained the available remedies that are still open to the complainant. Since criminal proceedings are not yet time-barred, the complainant can still bring judicial proceedings. The State party is emphatic that there is no question that domestic remedies are effective. As it has indicated in earlier submissions, both disciplinary and judicial sanctions have been imposed on officials where liability has been established. In this case, the Committee could have recommended that the complainant should initiate proceedings and exhaust domestic remedies in accordance with the Convention. The State party therefore requests that the Committee review its position in light of these considerations. The State party submits no observations on the merits.

Further comments by the parties

10. On 28 March 2007 the complainant pointed out that the State party was merely repeating the comments it has already made on admissibility and had put forward no observations on the merits.

11. On 12 April 2007, the State party again regretted the Committee's attitude in finding the complaint admissible despite all the State party's clarifications. It reported that further steps had been taken in line with rule 111 of the Committee's rules of procedure. In accordance with article 23 of the Code of Criminal Procedure, the prosecutor at the Tunis Court of Appeal had asked the Public Prosecutor at the lower court in Tunis to provide information on the facts of the complaint. A preliminary inquiry had thus been opened against such persons as might be indicated by the inquiry, to be carried out by the judge in charge of the 10th investigating office of the lower court in Tunis. The case had been registered with the investigating judge as No. 8696/10.[k] Pending the outcome of the judicial investigation and in light of the measures taken by the authorities, the State party invited the Committee to review its decision on admissibility.

12.1 On 20 April 2007, the complainant noted that the State party's observations were now irrelevant since a decision on admissibility had already been taken. The State party was simply repeating the arguments it had previously put forward. However, the complainant noted that concerning several of his allegations the State party had provided information that was not correct. He had submitted his first complaint to the Tunisian authorities in June 2000. Instead of facilitating his access to domestic remedies, the State party had continued to harass and intimidate him in 2005 and 2006, including by placing him under constant close surveillance. He had been placed under house arrest on several occasions. On 3 June 2006 he had been placed under temporary arrest and barred from leaving the country.

12.2 Given the State party's persistent refusal to comment on the merits of the complaint, the complainant requested the Committee to base its decision on the facts as he had described them. He recalled that the Human Rights Committee and the Committee against Torture had consistently maintained that due weight must be given to a complainant's allegations if the State party fails to provide any contradictory evidence or explanation. In the present case, the State party had not expressed any view on the merits. The complainant, however, had correctly proceeded to substantiate his allegations with a number of documents, including copies of his medical records, his complaint to the Tunisian judicial authorities, witness statements and several pieces of additional documentation.

12.3 The complainant asserted that the State party had not been able to demonstrate that remedies were effectively available to victims in Tunisia. It had merely described the domestic remedies available to victims in theory. The judicial system in Tunisia was not independent and the courts generally endorsed the Government's decisions. Under the circumstances the burden of proof with regard to the effectiveness of remedies rested on the State party. In the present case, the State party had not met this burden of proof because it had merely described the availability of remedies in theory without contradicting any of the evidence provided by the complainant to show that such remedies were not available in practice.

13.1 On 15 May 2007, the State party asserted that the complainant was accusing the Tunisian judiciary of hidden intentions. As far as the date of submission of the complaint was concerned, the State party argued that the receipt produced by the complainant in no way proved that he had actually sent the complaint, since the receipt made no mention of the nature or purpose of the letter sent. The State party considered that the complainant was again indulging in slanderous allegations against the Tunisian judiciary. It recalled that criminal proceedings had been instituted by the Public Prosecutor's Office. More than 100 law enforcement officers had been brought before the correctional and criminal courts since 2000 for violations committed while on duty. There was therefore no doubt about the effectiveness of domestic remedies.

13.2 In the State party's view, the complainant was resorting to manipulation in order to sabotage the judicial proceedings and disrupt the proper course of domestic remedies. Having undermined the efforts of the Public Prosecutor with the lower court in Tunis following submission of his complaint in September 2000, and those of the Deputy Prosecutor appointed to conduct the preliminary investigation into the allegations, the complainant was now adopting an attitude of non-cooperation. The complainant had been summoned to appear before the investigating magistrate on 30 April 2007 but had once again refused to make a statement on the grounds that his lawyer had not been permitted to attend, even though the examining magistrate had explained that his status as complainant did not require the assistance of a lawyer and that the latter did not need to be heard for the purposes of the inquiry. The examining magistrate therefore went ahead with other measures, including calling other people cited by the complainant. The case was continuing. Consequently, the State party considered that it was still within its rights to request the Committee to review its decision on admissibility pending the outcome of the ongoing judicial inquiry.

14. On 13 September 2007, the complainant again stated that the State party was merely reiterating earlier observations. He repeated that the State party bore sole responsibility for the lack of progress in the domestic proceedings. He recalled that the State party had even denied him legal assistance when he had been called before the examining magistrate, a point, moreover, that was not contested by the State party. Denial of access to a lawyer was a violation of Tunisian law.

15. On 25 October 2007, the State party again requested that the Committee postpone its decision on the merits until the investigation had been completed and all domestic remedies exhausted. It recalled that, contrary to the complainant's assertions, the judicial authority had shown due diligence by ordering:

- That a preliminary investigation be opened on the basis of a complaint that was not supported by any evidence
- That the investigation be conducted personally by a member of the Prosecutor's Office without the assistance of the criminal investigation service

- That, despite the decision by the Prosecutor's Office to file the case, a judicial investigation had been opened even though it might never lead to any result owing to the complainant's attitude of non-cooperation

On the last point, the State party recalled that under Tunisian law a witness was not entitled to legal assistance and that the complainant would not have qualified as an "assisted witness" on account of his status as a possible victim. The examining magistrate in charge of the case had summoned the complainant to appear at a hearing scheduled for 16 October 2007, but the latter had failed to appear.

Consideration of the merits

16.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

16.2 The Committee takes note of the State party's comments of 2 March, 12 April and 15 May 2007 challenging the admissibility of the complaint. While taking note of the State party's request of 25 October 2007 for a postponement, it finds that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the lack of any convincing new or additional information from the State party concerning the failure to reach any decision on the complaint after more than seven years of *lis alibi pendens*, which in the Committee's opinion justifies the view that the exhaustion of domestic remedies was unreasonably prolonged (see paragraph 8.5 above). The Committee therefore sees no reason to reverse its decision on admissibility.

16.3 The Committee therefore proceeds to a consideration on the merits and notes that the complainant alleges violations by the State party of article 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 11, 12, 13 and 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

16.4 The complainant has alleged a violation of article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention. In this respect, the Committee takes note of the complaint submitted and the supporting medical certificates, describing the physical injuries inflicted on the complainant, which can be characterized as severe pain and suffering inflicted deliberately by officials with a view to punishing him for acts he had allegedly committed and to intimidating him. The Committee also notes that the State party does not dispute the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's allegations must be duly taken into account and that the facts, as presented by the complainant, constitute torture within the meaning of article 1 of the Convention.

16.5 In light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant in breach of article 1 is more serious and is covered by the violation of article 16 of the Convention.

16.6 Regarding articles 2 and 11, the Committee considers that the documents communicated to it furnish no proof that the State party has failed to discharge its obligations under these provisions of the Convention.

16.7 As to the allegations concerning the violation of articles 12 and 13 of the Convention, the Committee notes that according to the complainant the Public Prosecutor failed to inform him whether an inquiry was under way or had been carried out in the three years following submission of his complaint in 2000. The Committee further notes that the State party accepts that the Deputy Public Prosecutor filed the case without further action in 2003, for lack of evidence. The State party has, however, informed the Committee that the competent authorities have reopened the case (see paragraph 11 above). The State party has also indicated that the investigation is continuing, more than seven years after the alleged incidents, yet has given no details concerning the inquiry or any indication of when a decision might be expected. The Committee considers that such a delay before an investigation is initiated into allegations of torture is unreasonably long and does not meet the requirements of article 12 of the Convention,[1] which requires the State party to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his case promptly and impartially investigated by, its competent authorities.

16.8 With regard to the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived him of any form of redress by failing to act on his complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level, and given the absence of any indication from the State party concerning the completion of the current investigation, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.

17. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.

Notes

[a] See communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, paras. 2.1, 2.2 and 5.3.

[b] See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.6.

[c] See communication No. 161/2000, *Hajrizi Dzemajl et al. v. Serbia and Montenegro*, decision adopted on 21 November 2002, para. 9.6.

[d] See communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4.

[e] See communication No. 6/1990, *Parot v. Spain*, decision adopted on 26 April 1994, para. 10.4.

[f] See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.5.

[g] See communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.4.

[h] See European Court of Human Rights, *Aksoy v. Turkey*, Preliminary objections, 18 December 1996, Reports of Judgments and Decisions 1996-IV, para. 53.

[i] See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.7.

[j] See for example communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 7.3.

[k] According to the registration certificate enclosed, which has been translated into French, "The registrar responsible for the 10th investigating office of the court of first instance in Tunis hereby certifies that the case registered as No. 8696/10, concerning the investigation of such persons as may be indicated by the investigation, in accordance with article 31 of the Code of Criminal Procedure, for the purposes of determining the circumstances of the arrest of Mr. Ali Ben Salem on 26 April 2000, at the El Manar 1 police station, Tunis, and the alleged events in relation thereto, is still under investigation."

[l] See communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views of 18 November 1993, para. 13.5.

Communication No. 297/2006

Submitted by:	Bachan Singh Sogi (represented by counsel, Johanne Doyon)
Alleged victim:	The complainant
State party:	Canada
Date of the complaint:	11 June 2006 (initial submission)
Date of the present decision:	16 November 2007

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2007,

Having concluded its consideration of complaint No. 297/2006, submitted on behalf of Bachan Singh Sogi under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant, Bachan Singh Sogi, an Indian national born in 1961, was resident in Canada at the time of submission of the present complaint and subject to an order for his removal to India. He claims to be a victim of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Ms. Johanne Doyon.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention by note verbale dated 14 June 2006. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested the State party not to deport the complainant to India while his complaint was being considered.

1.3 On 28 June 2006 the Committee was informed by the complainant and the State party that the complainant would be removed despite the Committee's request for a suspension of removal.

1.4 By note verbale of 30 June 2006 the Committee repeated its request to the State party to suspend removal of the complainant.

1.5 The Committee was informed by counsel that the complainant had been expelled on 2 July 2006 and that the Canadian Border Services Agency (CBSA) refused to reveal the destination. The State party confirmed that the complainant had been returned to India and justified the decision by the fact that he had failed to establish that there was a substantial risk of torture in his country of origin.

1.6 On 5 July 2006 counsel informed the Committee that the complainant was in a local prison in Gurdaspur, in Punjab, India, and that, according to police information, he had been beaten and subjected to ill-treatment by the local authorities. She also said that Amnesty International had agreed to monitor the complainant's case.

The facts as presented by the complainant

2.1 The complainant states that he and his family were falsely accused of being Sikh militants and on the basis of that allegation were arrested and tortured several times in India. The complainant was therefore compelled to leave the country.

2.2 According to the pre-removal risk assessment (PRRA) of 26 June 2003, the complainant had told the Canadian authorities that he was a farmer in Punjab in India, and that his home was not far from the border with Pakistan, which meant that he and his family had on several occasions been forced to harbour Sikh militants. In May 1991, February 1993, August 1997, December 1997 and January 2001, the complainant was arrested by the police on suspicion of belonging to the Sikh militant movement. He states that whenever an attack took place that was attributable to the terrorist militants in the region, the police turned up at his home and searched the house. His brother and his uncle had also been accused of being terrorists and his uncle had been killed by the police in 1993; his father, too, had been killed in an exchange of fire between terrorist militants and police in 1995.

2.3 The complainant was in the United Kingdom from July 1995 to February 1997 and applied for refugee status there. His application was turned down in September 1996. He decided to return to India, as the Akali Dal party had just been elected to govern the province in February 1997 and had promised to stop police violence and abuse in Punjab State; on his return he reportedly joined Akali Dal. He says that he continued to be harassed by the police. His brother had earlier left India for Canada and been granted refugee status there. This prompted the complainant to flee the country too, in May 2001.

2.4 On 8 May 2001 the complainant arrived in Toronto and claimed refugee status. In August 2002 the Canadian Security and Intelligence Service (CSIS) issued a report stating that there were reasonable grounds to believe that the complainant was a member of the Babbar Khalsa International (BKI) terrorist group, an alleged Sikh terrorist organization whose objective is to establish an independent Sikh state called Khalistan, taking in the Indian province of Punjab. Based on this report a warrant was issued for his arrest as he was deemed a threat to Canada's national security.

2.5 On 8 October 2002 a hearing was held to consider the report showing the complainant to be a member of a terrorist organization and an order was issued for his removal by the Immigration and Refugee Board.

2.6 The complainant applied for judicial review of the 8 October 2002 removal decision. On 8 December 2003 the Federal Court concluded that the hearing officer had not erred in determining that certain information was relevant but could not be disclosed for reasons of national security, and confirmed that that information should not be disclosed, but could nevertheless be taken into account by the Court. This ruling was upheld on appeal in a Federal Court of Appeal judgement dated 28 May 2004.

2.7 In parallel with this the complainant applied for a pre-removal risk assessment (PRRA). According to the PRRA decision of 26 June 2003, although the complainant had denied any involvement with any militant movement in Punjab, the CSIS report had found that there were substantial grounds for believing that he was a member of BKI and he was suspected under several aliases of having planned attacks on a number of Indian political figures. Given the profile established of the complainant, namely, a suspected member of BKI, the fact that BKI was listed as an international terrorist organization in several countries, and the treatment meted out by the police to suspected terrorists, the decision stated that "the complainant ran a real risk of torture and cruel and unusual punishment and treatment if returned to India".

2.8 In a decision of 2 December 2003, the Minister's delegate rejected the complainant's application for protection. While recognizing that there was a risk of torture in the event of deportation, she decided, after having weighed the interests at stake, that Canada's overall security interests should prevail in this case. She found that there was sufficient evidence of the complainant's membership of BKI and of his intention under various aliases to assassinate Indian public figures, including the Chief Minister of Punjab and the former Chief of Police of Punjab.

2.9 The complainant applied for judicial review of the 2 December 2003 decision of the Minister's delegate. On 11 June 2004, the Federal Court in Toronto noted that, according to Supreme Court case law, in particular the *Suresh* judgement cited by the complainant,[a] the prohibition of torture was "an emerging peremptory norm of international law" and international law rejected deportation to torture even where national security interests were at stake. The Court nevertheless considered that exceptional circumstances in the present case[b] led to the conclusion that the complainant was a "skilled BKI assassin who will lie to protect himself", for the exceptional circumstances were very different from those prevailing in the *Suresh* case. The Court found that, in the deportation decision, the Minister's delegate had erred in two respects. Firstly, the decision did not address any alternatives to deportation to torture: any such decision must consider, in the balancing exercise, any alternatives proposed to reduce the threat. Secondly, the decision failed to adequately describe and explain the threat posed to national security. Consequently the Court referred the deportation decision back for the Minister's delegate to prepare a revised version of the decision which would consider the alternatives to deportation suggested by the applicant and specifically define and explain the threat.

2.10 On 6 June 2005 the Court of Appeal upheld the appeal and referred the case back for a fresh PRRA. A second PRRA decision was issued on 31 August 2005, again finding that the complainant was at risk of torture in India since he was suspected of being a senior member of BKI.

2.11 On 11 May 2006 another decision on protection was handed down by the Minister's delegate, this time finding that, while the complainant might be prosecuted in India for his alleged part in assassination attempts, new legislation had entered into force protecting accused persons from abuses that had been tolerated under the old law.[c] On that basis she had determined that the complainant would run no risk of torture if he was returned to India. She also determined that the complainant posed a threat to national security. The request for protection was therefore denied.

The complaint

3.1 The complainant alleges a violation of article 3 of the Convention. He argues that the 2 December 2003 decision denying him protection was taken on the basis of irrelevant criteria such as the nature and gravity of past actions and the threat he posed to Canada's security, and that it violates the Convention, which allows for no exceptions with respect to return to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture. He recalls that, where it is shown that the person would be in danger of torture, it is against the principles proclaimed by the Convention to use irrelevant considerations to justify the denial of protection.[d] He argues that, in the 11 May 2006 decision on protection, the Minister's delegate again applied irrelevant considerations to justify the denial of protection to the applicant, in violation of the Convention and of international law. He also claims that the evidence in the case file shows beyond a doubt that there was a risk of torture if he was returned to India, as established in the three decisions preceding the 11 May 2006 denial of protection.

3.2 The complainant claims that the Minister's delegate had put him in even greater danger in her 11 May 2006 decision by attributing to him crimes he had not personally committed. Furthermore, there were several errors in the decision, for the Minister's delegate had failed to take account of the documents showing that torture was practised in India. According to these documents, torture was commonly used as an interrogation technique and the police were trained in its use, employing sophisticated methods that did not leave visible traces. The complainant argues that, rather than assessing the risk of the police using torture, the Minister's delegate merely asserted that the worst problems in Punjab were rural employment and the lack of food industries. He also points out that the delegate's claim that conditions in Punjab had improved overall in no way proved that a person believed to be a high-profile member of BKI would not be tortured. The delegate had also failed to address his specific situation. She ultimately had rejected out of hand the objective evidence such as Amnesty International's January 2003 report showing that, notwithstanding the legislative reform intended to stamp out torture, Punjab's judicial system remained most unsatisfactory. Lastly, the complainant states that the background documentation submitted clearly shows that torture is practised by the Indian authorities, particularly against militants or suspected terrorists. He claims that he would still be at risk of torture if he was returned to India.

State party's observations on admissibility and the merits

4.1 The State party transmitted its observations on admissibility and the merits by note verbale dated 12 January 2007. The State party notes that, even though two requests for judicial review are still pending before the Federal Court, it will not at this stage challenge the admissibility of the communication for non-exhaustion of domestic remedies, though it reserves the right to do so once the proceedings in the Canadian courts are concluded.

4.2 The State party maintains that the complaint should be rejected on the merits because the complainant has failed to establish that he personally would run a real and foreseeable risk of torture in India. The State party notes that the human rights situation in Punjab has improved considerably since the end of the Sikh insurrection.

4.3 The State party further argues that the delegate of the Minister of Citizenship and Immigration has given careful consideration to the complainant's claims and determined that he was not in danger of being subjected to torture in India. The Committee should not substitute its own findings for those of the Minister's delegate except in case of manifest error, abuse of process, bad faith, bias or serious procedural irregularities. In the State party's view the complainant's claims to the Committee call into question the delegate's decision to reject his request for protection, and indirectly invite the Committee to conduct a judicial review of the decision. The State party recalls that the Committee's role is to establish a violation of article 3 of the Convention, not to carry out a judicial review of the delegate's decision.

Further observations by the State party

5. On 28 February 2007 the State party informed the Committee that the complainant's two requests for judicial review, one in respect of the decision of the Minister's delegate rejecting his application for protection and the other in respect of the decision to enforce the removal order, had been rejected by the Federal Court of Canada on 1 February 2007. The Court had found that the applications were now moot and that there were no grounds for it to exercise its discretion to consider the cases on the merits. The Court's judgement may be appealed in the Federal Appeal Court if the judge certifies that the matter raises a serious question of general importance. Since neither the complainant nor the Canadian Government requested certification of such a question within the time set by the Court, and since the Court itself has not certified that there is such a question, the Federal Court ruling has become enforceable.

Counsel's comments on the State party's observations

6.1 On 6 April 2007 counsel contested the State party's observations and communicated to the Committee certain new facts that had arisen since the complaint was submitted to the Committee.

New facts arising since submission of the complaint to the Committee

6.2 Counsel states that an application for judicial review of the decision to enforce the removal of the complainant had been made on 11 June 2006. Another application, for judicial review of the 11 May decision on protection, was still pending before the Federal Court at the time. Counsel states that she was notified on 12 June 2006 that the complainant's removal had been set for 16 June 2006. She claims that, despite several requests for the exact time and destination of removal, she was given no information.

6.3 A provisional application for a stay was then made to the Federal Court, together with a request for an emergency hearing by telephone conference. The Canadian Government agreed to a temporary stay of removal pending a Federal Court hearing on the application for a stay, to be held on or around 16 June 2006. On 23 June 2006 the Federal Court rejected the application for a stay and the removal order then became enforceable.

6.4 On 30 June 2006 counsel filed a notice of appeal against the decision on the application for a stay with the Federal Court of Appeal, which rejected it the same day.

6.5 The Canadian Government deported the complainant to India on 2 July 2006, despite the Committee's request for interim measures. Counsel repeats that she was not informed of the destination, but notes that after the deportation she was told, on or about 5 July 2006, that the complainant had been arrested by the local police on arrival at the airport and taken to the Gurdaspur police station, where he remained in detention until 10 July 2006 on a number of serious criminal charges. She also says she was told that the complainant had been beaten and ill-treated by the Indian authorities while in detention at the Gurdaspur police station. Counsel states that the complainant was then taken from the police detention centre to the Chief Judicial Magistrate.

6.6 After the complainant had been deported, the two applications for leave and judicial review of the 11 May 2006 protection decision and of the removal order were granted. On 29 August 2006 the judge found that the case raised serious questions and the applications were accordingly heard in the Federal Court on 22 January 2007.

6.7 On 1 February 2007 the applications for leave and judicial review were rejected by the Federal Court, which found that they had become moot by virtue of the enforcement of the removal order against the complainant. His removal despite the fact that those requests were still before the Court deprived the complainant of the remedies available to him in Canada and he has therefore exhausted all domestic remedies.

6.8 Counsel contacted the complainant in India on 13 March 2007. He told her that he was charged with having supplied explosives to a person who had been convicted under Canadian arms and explosives legislation. He also told her he had been beaten by the police while in prison and threatened with further beatings if he reported that ill-treatment.

Comments on the merits

6.9 Counsel notes that, by sending the complainant back to India, the State party violated his rights under the procedure for determining the risks of torture and article 3 of the Convention. She recalls that the Canadian authorities denied that the complainant ran any risk of torture in order to be able to send him back legally. The Canadian Government erred in its assessment of the risk of torture in the event of return, in part by having recourse to secret evidence that the complainant did not have access to and could not challenge.

6.10 Counsel further claims that the Canadian Government was a party in the decision on protection for the complainant, thereby violating his right to be judged by an independent, impartial decision maker. She notes that it is clear from an e-mail sent to CBSA on 10 May 2006 by an official of the Government's Security and War Crimes Unit that CBSA was already aware that the protection decision would be negative and that the removal procedure had been set in motion, even though the decision had not yet appeared in the immigration computer files (FOSS). Yet the complainant was only notified of the negative decision on his case on 15 May 2006. The enforcement of the complainant's removal had thus already begun, despite the fact that he himself had not yet been informed of the decision and at this stage still had several remedies available to him against the decision. In counsel's view, the Minister's delegate responsible for taking the decision on protection failed to act in an independent and impartial manner.

6.11 Counsel argues that the 23 June 2006 decision rejecting the application for a stay was unlawful and incorrect in fact and in law since the evidence showed that there was a probable risk of torture were the complainant to be returned, in violation of article 3 of the Convention. Counsel argues that the application for a stay had to be presented in provisional fashion because she had been given only very short notice of the date of removal, leaving little time to prepare an application in such a complex case. However, the presiding judge at the hearing had refused to hold an interim hearing on the application and instructed the counsels to present their arguments on the merits. This procedure, she says, violated the complainant's right to proper representation. The judge at first instance had erred in the decision on the stay insofar as he had ignored the evidence of the three PRRAs pointing to probable risk of torture or persecution in the event of return to India.

6.12 Counsel notes that the complainant had been arrested and held for nearly four years on the basis of secret evidence and was never allowed to know the charges or evidence against him. In its recent *Charkaoui* decision,[e] the Supreme Court of Canada had found that the holding of in camera proceedings to consider evidence withheld from the applicant and with no public hearing on the admissibility of that evidence violated the rights to life, liberty and security of person under section 7 of the Canadian Charter of Rights and Freedoms.

6.13 During his four years in detention, the complainant was under constant threat of removal to a country where he risked torture, a situation that was in itself a form of torture and a violation of article 3 of the Convention.[f] As certified in the psychologist's report submitted in 2003, he suffered from serious psychological distress and showed symptoms of insomnia and stress, which made for additional risk in the event of return.

6.14 Counsel recalls the absolute prohibition in international law on return of a person at risk of torture[g] and claims that the return of the complainant is a deliberate and direct violation of the State party's international obligations and of article 3 of the Convention.

6.15 In counsel's view, therefore, the return of the complainant notwithstanding the decisions establishing a risk of torture and persecution, the absence of any new circumstances, the Committee's request for interim measures, the complainant's state of health and the evidence that there is a current risk of torture is unconstitutional and a direct violation of article 3 of the Convention. This conclusion is borne out by the fact that the complainant was arrested on arrival in India, had serious charges brought against him and was beaten and threatened by the Indian authorities.

Further comments by the parties

7.1 On 26 July 2007 the State party asserted that the only relevant point the Committee had to determine was whether, at the time of the complainant's return, there were substantial reasons to believe that he would personally be at risk of torture in India. Counsel's contentions in respect of various stages of the pre-removal procedure are incompatible *ratione materiae* with article 3 of the Convention. The State party recalls that article 3 does not recognize the right to be heard by an independent and impartial tribunal, the right to be properly represented by counsel or the right to know the evidence against one. The claims that the decisions rejecting the complainant's applications for protection and a stay of removal were arbitrary and unlawful cannot point to a violation of article 3. The State party considers that counsel is effectively asking the Committee to hear an appeal against the Canadian courts' decisions.

7.2 As to the claim that the State party had "been a party" to the decision of the Minister's delegate, the State party argues that it too is inadmissible, on grounds of non-exhaustion of domestic remedies, insofar as the complainant raised it for the first time before the Committee, whereas he should have raised it first with the Federal Court of Canada.

7.3 The State party argues that counsel's claims in respect of the pre-removal procedure are inadmissible because they do not demonstrate the minimum justification needed to meet the requirements of article 22 of the Convention. In the alternative, the claims in respect of the pre-removal procedure do not constitute a violation of article 3 of the Convention. The State party points out that the complainant's claims with regard to the Federal Court's refusal to grant the parties an interim hearing and his right to be heard by an independent and impartial court were in fact raised in the Federal Court, which found that the time limit for submitting an application for a stay was normal and noted that the complainant had known since 15 May 2006 that his request for protection had been denied and the removal procedure was to be set in motion. The State party argues that the complainant could have prepared his application for a stay well before 12 June 2006. As to the second claim, the presiding judge at the stay hearing noted that the mere fact that the same case had come before him in earlier proceedings did not in itself give rise to a reasonable apprehension of bias. The State party is therefore of the view that the complainant's claims have been considered by the national courts in accordance with the law and have been rejected.

7.4 As to the claim that the decision rejecting the application for a stay was unlawful and incorrect, the State party argues that the Federal Court examined all the documentary evidence, including the fresh evidence submitted by the complainant, and declared itself not convinced that the complainant would be in danger of being subjected to torture in the event of return.

7.5 As to the claim that the State party was involved in the 11 May 2006 decision by the Minister's delegate rejecting the complainant's request for protection, the State party notes that this allegation is based on an e-mail to a CBSA staff member. It states that CBSA had had no say in the delegate's decision and the delegate had acted quite impartially. The State party further points out that there had not been three "preceding decisions" in the complainant's favour but one decision, dated 2 December 2003, which had been annulled, and two torture risk assessments carried out by PRRA officials (dated 26 June 2003 and 31 August 2005). The State party notes that, while delegates should take such assessments into account, they are not bound by them and it is they who must take the final decision on the request for protection.

7.6 As to the "secret" evidence, the State party asserts that there is no connection between the risk assessment conducted by the Canadian authorities and the examination of evidence not disclosed to the complainant for security reasons. In considering the question of risk of torture, the delegate did not consider the threat to Canada's security posed by the complainant. Her conclusion was thus not based on undisclosed evidence. The State party further points out that, under Canada's Immigration and Refugee Protection Act, in any inquiry to determine whether a foreigner is inadmissible, a judge may consider relevant information without disclosing it to the applicant if disclosure would be injurious to national security, although a summary of the information must be provided to the applicant, and that was done in this case.

7.7 The State party notes that the allegations regarding failure to apply the Committee's interim measures and regarding the threats to return the complainant to a country where he would be at risk of torture were never raised before the domestic courts. Canada takes its international obligations under the Convention seriously, but considers that requests for interim measures are not legally binding. As a result, contrary to the Committee's decision in *Tebourski v. France*,[h] the State party contends that non-compliance with such a request cannot in itself entail a violation of articles 3 and 22 of the Convention. It notes that, in *T.P.S. v. Canada*,[i] while the Committee expressed concern at the fact that the State party did not accede to its request for interim measures, it nevertheless found that Canada had not violated article 3 of the Convention in returning the complainant to India.

7.8 As to the assertion that the "threat of return to torture" in itself constitutes a violation of article 3, in the State party's view this claim should be declared incompatible *ratione materiae* with article 3. It is in any case inadmissible because it fails to demonstrate the minimum justification. The State party denies having subjected the complainant to psychological torture and argues that the progress of legal proceedings to determine a person's admissibility to a country and the mere possibility of being returned to a country where there was an alleged risk of torture could not constitute "torture" within the meaning of article 1 of the Convention.

7.9 The State party points out that it always looks very closely at the Committee's requests for interim measures and usually complies with them. In this case, after considering the file, and based in part on the negative findings of the Minister's delegate regarding the risks involved in returning to India and on the Federal Court's denial of the complainant's application for a stay, the State party considered that the complainant had not established that there was a substantial risk of torture in India.

7.10 As regards the allegation of a violation of article 3 of the Convention based on the complainant's return to India, the State party recalls that the matter must be weighed in the light of all the information the Canadian authorities were, or should have been, aware of at the time of expulsion. The State party recalls that, while torture is still occasionally practised in India, including in Punjab, the complainant failed to establish that he personally ran a real and foreseeable risk of torture. It notes that counsel reports having been told by the complainant's brother-in-law that the complainant had been beaten and ill-treated by the Indian authorities while in detention. The State party recalls that the complainant had not been considered credible by the Canadian authorities and the Committee should accordingly attach little weight to these claims. Furthermore, article 3 applies only to torture and does not provide protection against ill-treatment as covered by article 16 of the Convention.

8. In a letter of 24 September 2007 counsel repeats her earlier arguments.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering a claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

9.2 The Committee takes note of the State party's argument that the complainant's claims with regard to the pre-removal process, i.e. the allegedly incorrect and unlawful decisions of the Canadian authorities, the non-disclosure of certain evidence, the Federal Court's refusal to grant an interim hearing and its alleged bias, are incompatible *ratione materiae* with article 3 of the Convention. However, the Committee considers that such irregularities must be considered in order to ascertain whether there has been a violation of article 3 of the Convention.

9.3 As to counsel's claim that the constant threat of being returned to a country where he would be in danger of torture, which hung over the complainant for four years, causing him "serious psychological distress", in itself constituted a form of torture, the Committee recalls its case law to the effect the aggravation of a complainant's state of health following expulsion - or, as in this case, by the threat of return while proceedings are ongoing - does not in itself constitute a form of torture or of cruel, inhuman or degrading treatment within the meaning of articles 1 and 16 of the Convention.[j]

9.4 With regard to the State party's contention that the complaint of a violation of article 3 of the Convention based on the return of the complainant to India is insufficiently substantiated for the purposes of admissibility, the Committee considers that the complainant has provided sufficient evidence to permit it to consider the case on the merits.

9.5 Accordingly, the Committee decides that the complaint is admissible in respect of the alleged violation of article 3 of the Convention based on the return of the complainant to India. The claim relating to non-compliance with the Committee's request to suspend removal also requires consideration on the merits under articles 3 and 22 of the Convention.

Consideration on the merits

10.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 22, paragraph 4, of the Convention.

10.2 The Committee notes the complainant's contention that the Minister's delegate, in her decision of 2 December 2003, used irrelevant criteria as grounds for refusing protection, namely that the person constituted a threat to Canada's security. The Committee recalls that article 3 affords absolute protection to anyone in the territory of a State party, regardless of the person's character or the danger the person may pose to society.[k] The Committee notes that the Minister's delegate concluded in her decision that the complainant personally ran a real risk of torture if he were returned. However, she considered that the general interest of Canada's security should prevail over the complainant's risk of torture, and refused the protection on this basis.

10.3 The Committee also takes note of the complainant's argument that, in the decision of 11 May 2006, the Minister's delegate did not take into account the complainant's particular situation, and in denying protection merely cited a supposed improvement in the general conditions in the Punjab. The State party replied to this argument by stating that it is not for the Committee to conduct a judicial review of the decisions of the Canadian courts, and that the Committee should not substitute its own findings for those of the Minister's delegate, except in case of manifest error, abuse of process, bad faith, bias or serious procedural irregularities. The Committee recalls that, while it gives considerable weight to the findings of fact of the State party's bodies, it is entitled to freely assess the facts of each case.[l] In this case, the Committee notes that, in her protection decision of 11 May 2006, the Minister's delegate denied the real, personal threat of torture based on the fresh assessment, and merely accepted that a new law had been adopted in India apparently protecting accused persons from torture, without regard to whether the law would effectively be implemented or how it would affect the complainant's specific situation.

10.4 As for the Canadian authorities' use of evidence that for security reasons was not divulged to the complainant, the Committee notes the State party's argument that this practice is authorized by the Immigration and Refugee Protection Act, and that in any event such evidence did not serve as a basis for the decision by the Minister's delegate, as she did not consider the threat the complainant posed to Canadian security in her assessment of the risks. However, the Committee notes that, in both her decisions, the delegate considered the threat to national security.

10.5 On the basis of the above, the Committee considers that the complainant did not enjoy the necessary guarantees in the pre-removal procedure. The State party is obliged, in determining whether there is a risk of torture under article 3, to give a fair hearing to persons subject to expulsion orders.

10.6 As to the risk of torture at the time the complainant was removed, the Committee must determine whether, in sending the complainant back to India, the State party failed to meet its obligation under article 3 of the Convention not to expel or return anyone to another State where there are substantial reasons for believing that they would be in danger of being subjected to torture. In order to determine whether, at the time of removal, there were substantial reasons for believing that the complainant would be in danger of being subjected to torture if he was returned to India, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which they were returned.

10.7 The Committee recalls its general comment on the implementation of article 3, in which it states that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".[m]

10.8 The Committee must determine whether there were substantial grounds to believe torture would occur in the light of the information the authorities of the State party were, or should have been, aware of at the time of removal. In this case, the Committee notes that all the information before it, in particular the Canadian Security and Intelligence Service (CSIS) report and the two pre-removal risk assessments (PRRA), showed that the complainant was suspected of being a member of BKI, an alleged terrorist organization, and that a number of attacks on Indian political leaders were attributed to him. The information obtained after removal, i.e., his detention and the ill-treatment to which he was allegedly subjected during his detention in Gurdaspur, is relevant only to assess what the State party actually knew, or could have deduced, about the risk of torture at the time the complainant was expelled.[n]

10.9 The Committee also notes that, according to various sources and the reports provided by the complainant, the Indian security and police forces continue to use torture, notably during questioning and in detention centres, especially against suspected terrorists.

10.10 In the light of the foregoing, and taking account in particular of the fact that the complainant is allegedly a member of what is regarded as a terrorist organization, and that he was wanted in his country for attacks on several public figures in Punjab, the Committee considers that, by the time he was returned, the complainant had provided sufficient evidence to show that he personally ran a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin. The Committee therefore concludes that, under the circumstances, the complainant's removal to India constituted a violation of article 3 of the Convention.

10.11 As regards non-compliance with the Committee's requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the State party's obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention.[e] Consequently the Committee considers that, by sending the complainant back to India despite the Committee's repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the expulsion of the complainant to India on 2 July 2006 was a violation of articles 3 and 22 of the Convention.

12. In conformity with article 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views, to make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.

Notes

[a] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1.

[b] According to the Federal Court ruling cited here, the evidence before the Minister's delegate showed the following exceptional circumstances:

- The applicant, on behalf of BKI, used an alias to facilitate his plan to assassinate the Chief Minister of Punjab, his son and the former Chief of Police of Punjab
- A *Times of India* article dated 9 June 2001 described the assassination plot and said that, had it succeeded, it would have destabilized the Indian Government

- Information corroborated by reliable sources verified that the applicant is the same person as the Gurnam Singh mentioned in the article
- BKI is implicated in the bombing of Air India flight 182
- The secret evidence showed that the applicant has used six aliases including the name Gurnam Singh
- The applicant is skilled in the use of sophisticated weapons and explosives
- The letters suggest that, contrary to the applicant's statement in his PRRA application (that he had never claimed refugee status elsewhere), the applicant is a failed refugee claimant in the United Kingdom

[c] The Minister's delegate stated that the Prevention of Terrorism Act 2001 had been replaced by the LOTA of 2002. The new law apparently established certain safeguards for the accused, such as a prohibition on forced confessions and a guarantee of the accused's right to have complaints of torture considered.

[d] The complainant cites the European Court of Human Rights judgement in *Chahal v. United Kingdom* [1996] 23 ECHR 413.

[e] *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9.

[f] Counsel cites a report by Physicians for Human Rights entitled "Break them down - Systematic use of psychological torture by US forces" (20 May 2005), which defines the use of threats to return someone to a country where torture is practised as a form of torture in itself.

[g] In this context counsel cites the European Court of Human Rights decision in *Aksoy v. Turkey* (100/1995/606/694).

[h] Communication No. 300/2006, Views of 1 May 2007, paras. 8.6 and 8.7.

[i] Communication No. 99/1997, Views of 16 May 2000, para. 16.1.

[j] See *M.B.S.S. v. Canada*, communication No. 183/2001, Views of 12 May 2004, para. 10.2; and *G.R.B. v. Sweden*, communication No. 83/1997, Views of 15 May 1998, para. 6.7.

[k] See *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.2. Similarly, the European Court of Human Rights has considered the protection from torture to be absolute in the event of removal, as set out in article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, recalling that neither the behaviour of the victim nor the threat they might pose to national security should be taken into account when considering a claim (see decision in *Chahal v. United Kingdom*).

[l] See *Dadar v. Canada*, communication No. 258/2004, Views of 23 November 2005, para. 8.8.

[m] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, para. 6.

[n] See *Agiza v. Sweden*, communication No. 233/2003, Views of 20 May 2005, para. 13.2; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.1.

[o] See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6.

Communication No. 299/2006

Submitted by:	Jean Patrick Iya (represented by counsel, Mr. Guido Ehrler)
Alleged victim:	The complainant
State party:	Switzerland
Date of the complaint:	27 June 2006 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2007,

Having concluded its consideration of complaint No. 299/2006, submitted to the Committee against Torture on behalf of Mr. Jean Patrick Iya under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is Jean Patrick Iya, a national of the Democratic Republic of the Congo born in 1968 and facing deportation from Switzerland to his country of origin. He claims that his deportation would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Mr. Guido Ehrler.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 21 December 2006.[a] At the same time the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested the State party not to deport the complainant to the Democratic Republic of the Congo while his complaint was being considered. The State party acceded to such request.

1.3 On 20 February 2006, the State party provided its comments on the merits of the case and asked the Committee to lift its request for interim measures. On 22 May 2007, the Committee decided to maintain its request for interim measures.

The facts as presented by the complainant

2.1 From 1995 to 1997, the complainant worked as a journalist for the newspaper Elima in the Democratic Republic of the Congo, his main duty being to compile and publish information on human rights violations under the Mobutu regime. He notes that, during that period, he published articles on nearly 300 cases of human rights violations and "had problems" with the Mobutu regime as a result. After president Kabila took power in 1997, the complainant was detained on several occasions and, in late 1997, the publication of Elima was prohibited.

2.2 In January 1997, the complainant joined the Union for Democracy and Social Progress (UDPS) and was responsible for the recruitment of young militants. In January 1998, he was arrested and his press card was confiscated, which put an end of his career as a journalist. From 2000 to 2002, he worked for a non-governmental organization.

2.3 In June 2002 and May 2003, UDPS organized demonstrations against the Kabila regime. The complainant, who was among the organizers, was arrested on both occasions. On the first occasion, he was detained without charges at the military camp of Tshatshi and later transferred to the Gombé prison, where he was allegedly whipped and released two weeks later. On the second occasion, he was detained in Tshashti and then transferred to the Makala prison, a provisional arrest warrant having been issued against him on 22 May 2003.

2.4 On 1 May 2004, the complainant allegedly escaped from prison by bribing two prison guards. He left the country for Brazzaville, in the Republic of the Congo, where he stayed at a UDPS local representative's. Four days later, he travelled under a false identity to Lagos, Nigeria, where he stayed until 26 June 2004. From Lagos he flew to Italy holding a Nigerian citizen's passport and finally arrived in Switzerland, where he sought asylum on 29 June 2004. In Switzerland, he was asked to provide documents certifying his identity within 48 hours, which he was unable to do, as he was not able to contact his family in the Democratic Republic of the Congo.

2.5 On 3 May 2004, a search warrant was issued by security forces in the Democratic Republic of the Congo against the complainant, wanted for offenses against the public safety and against the Chief of state.

2.6 On 9 August 2004, the Swiss Federal Office for Refugees (ODR) refused to consider the merits of the complainant's asylum request and ordered his deportation. This decision was adopted on the basis of the complainant's failure to provide identification documents within 48 hours since the filing of his complaint with allegedly no valid justification for this delay. ODR considered that the complainant's statement that his identity card had been confiscated during his detention in May 2003 was not credible and that his declaration on his alleged persecution was vague and did not rely on concrete facts.

2.7 On 19 August 2004, the complainant's appeal was rejected by the Asylum Appeals Board (CRA). Although the complainant submitted two documents to prove his identity, a certificate of celibacy and a degree certificate, the Board considered that these documents should have been submitted within the initial 48-hour deadline. It further considered that the complainant was not credible.

2.8 On 24 August 2005, the complainant requested a reopening of the proceedings and submitted further documents to prove his identity, including a UDPS membership card, a certificate confirming his engagement as a UDPS activist and the party's statutes, as well as other documents related to the party's activities. On 22 September 2005, the CRA rejected this request on the ground that a decision not to consider the merits of the case could not be quashed unless sufficient explanation was provided as to the delay in submitting the relevant documents.

2.9 The complainant's second request to reopen the proceedings was rejected by the CRA on 4 January 2006, on the basis of his failure to pay the judicial fees. The CRA also rejected his request to pay these fees on instalments.

The complaint

3.1 The complainant claims that his deportation from Switzerland to the Democratic Republic of the Congo would violate article 3 of the Convention, as there are serious grounds to believe that he would be at risk of torture if returned. He notes that a search warrant has been issued against him and that torture is a common practice in the Democratic Republic of the Congo. He refers to Amnesty International 2005 Report to confirm this statement.

3.2 He further claims that the fact that his asylum application and the evidence provided were not considered in substance violates the principles of article 3.

State party's observations on the merits

4.1 On 20 February 2007, the State party does not contest the admissibility of the communication. On the merits, the State party contends that the complainant has not established a personal, real and foreseeable risk of torture upon his return to the Democratic Republic of the Congo. While noting the human rights situation in the Democratic Republic of the Congo, the State party recalls that this situation is not in itself a sufficient element to conclude that the complainant would be at risk of torture if returned. It further recalls that the complainant has not submitted any evidence to national authorities that proves the acts of ill treatment that he allegedly suffered while he was detained in Gombé prison.

4.2 The State party notes that, according to the law in force at the time where the proceedings against the complainant were held -the Asylum Act of 26 June 1998-, Swiss authorities could not consider an asylum request if the asylum seeker had failed to submit identity documents within 48 hours since the asylum request had been filed. This Act was amended by Federal Act of 16 December 2005, which entered into force on 31 December 2005. The State party maintains that, from that date, both the ODR and the CRA thoroughly examined the issue of the complainant's alleged persecution and concluded that the complainant's statements were vague and not credible, in particular his description of his escape from prison.

4.3 The State party contends that the complainant has not submitted any evidence of his political engagement and alleged persecution. In the State party's view, the only evidence that would prove his political activities in the Democratic Republic of the Congo was a certificate by the UDPS local representative in Lagos. According to the ODR, this document could be easily "bought" in the Democratic Republic of the Congo. Additionally, the header of this "certificate" does not correspond to the text and the document is otherwise incomplete. The State party further questions the validity of the provisional arrest warrant and the search warrant allegedly issued by the Public Ministry in the Democratic Republic of the Congo and notes that the complainant has not explained how his family managed to obtain the original of these internal documents. It adds that DRC forms can be easily obtained and that the desired text could then be added.

4.4 The State party notes that, according to the interrogation records of 22 July 2004, the complainant's knowledge of the political situation in the Democratic Republic of the Congo did not reveal a political interest and, in particular, an interest in journalistic activities in the country.

According to these records, the complainant had not been able to name any of the leaders of UDPS and did not show a detailed knowledge of the party's structure. The State party contends that the complainant's presentation of events is otherwise vague and poorly substantiated and that he is therefore not credible.

Complainant's comments on the State party's observations on the merits

5.1 On 7 September 2007, the complainant recalls the appalling situation of human rights in the Democratic Republic of the Congo. It notes that the Committee has denounced that security forces continue to practice arbitrary detentions without any judicial control and to inflict torture on detainees.[b] Detention conditions, including overcrowdings, malnutrition and lack of medical care, put in danger the lives of detainees and a number of them are reported dead. It further notes that UDPS is one of the oldest opposition parties in the Democratic Republic of the Congo. In summer 2005 this party organized demonstrations against the deferment of elections and 10 demonstrators resulted dead. In March 2006, UDPS members demonstrated in Kinshasa against the new electoral act and were repressed by security forces with truncheons and tear gas. In May and June 2006, UDPS members were arbitrarily arrested and ill-treated in Mbuji-Mayi. The complainant notes that journalists who are critical with the regime are constantly targeted by Congolese authorities. In this context, the complainant maintains that he would be subject to a risk of torture if returned, in light of his double condition of journalist and UDPS militant, as well as the fact that he is being searched by the authorities since his escape from prison.

5.2 The complainant notes that his asylum request was not rejected on the grounds of insufficient evidence on the alleged acts of ill-treatment suffered in the Democratic Republic of the Congo but because he failed to provide his travel documents within 48 hours since the request had been filed. He insists that his complaint was never examined in substance by national immigration authorities.

5.3 With regard to his alleged lack of credibility, the complainant notes that the interrogations at the Registry Centre serve the purpose of registering asylum seekers and informing them on the procedure to follow. Therefore, interrogation records have little evidentiary value in examining the asylum request. He adds that, even though he was interrogated in a "rudimentary manner" on his grounds for asylum, his declarations were sufficiently precise, detailed and coherent to prove that he was persecuted in the Democratic Republic of the Congo. As to his alleged lack of knowledge of the structure of UDPS, he claims that from the interrogation record it transpires that he understood that he was being asked about the current structure, to which he replied that he could not possibly know as he had been in prison for a year. He notes that the ODR staff should have dissipated this misunderstanding. He adds that, contrary to the State party's submission, the interrogation records show that he had a sufficient knowledge of the political situation of his country.

5.4 The complainant notes that the State party does not indicate the information sources on which it relies to question the validity of the documents submitted to immigration authorities. He adds that the State party failed to comply with its obligation to thoroughly investigate the complainant's political activities on the ground and that the argument according to which any of these documents can be "bought" in the Democratic Republic of the Congo is not substantiated.

5.5 The complainant notes that the State party does no longer question his identity or the fact that he obtained a degree in journalism and that he worked for the opposition journal Elima. He recalls that journalists in the Democratic Republic of the Congo are particularly exposed to human rights violations.

5.6 Finally, he explains that he has been presented in many articles by Amnesty International and other organizations as a political opponent that had been imprisoned in the Democratic Republic of the Congo and that this fact alone would be sufficient to put him at risk of torture if returned to this country.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits.

6.2 The issue before the Committee is whether the complainant's removal to the Democratic Republic of the Congo would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Democratic Republic of the Congo, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".[c]

6.5 In the present case, the complainant contends that a personal and present risk of torture in the Democratic Republic of the Congo is justified by his past activities as a journalist and as a militant of an opposition party, as a result of which he claims to have been detained on several occasions and ill-treated, and by the fact that he is allegedly searched in this country since his escape from the Gombé prison in 2004. The Committee notes that the State party has questioned the complainant's credibility. At the same time, the Committee notes the complainant's argument that national authorities never examined his request in substance but rejected it on procedural grounds. The Committee takes note of the entry into force of the Swiss Federal Act on 31 December 2005 amending the 1998 Asylum Act, article 38 of which established the 48-deadline requirement for immigration authorities to consider the merits of an asylum request. The State party contends that, since that date, national authorities have thoroughly examined the complainant's request in substance. However, the Committee observes that both the ODR and the CRA rejected the complainant's request on the basis of his failure to submit identity documents within the initial deadline and that his two requests to reopen the procedures were rejected by the CRA also on procedural grounds. All these decisions were adopted prior to the entry into force of the new Federal Act except for the last CRA decision of 4 January 2006, which rejected the complainant's application on the basis of his failure to pay judicial fees. Therefore, the Committee considers that his case was never examined on the merits by national authorities.

6.6 The State party has further questioned the authenticity of the evidence submitted by the complainant. At the same time, the complainant argues that national authorities did not thoroughly examine the evidence submitted by him or corroborate his declarations on the ground. The Committee observes that the complainant has provided a coherent version of the facts and the relevant evidence to corroborate these facts. Therefore, the Committee concludes that the State party's arguments to challenge the validity of this evidence and the complainant's declarations have not been sufficiently substantiated.

6.7 Finally, the Committee recalls that torture and ill-treatment of detainees by security forces and services in the Democratic Republic is still common.[d]

6.8 The Committee considers that the complainant's political activities and his recent detention in the Democratic Republic of the Congo, together with the fact that he is being searched in this country, are sufficient arguments to conclude that he would face a personal risk of torture if forcibly returned to the Democratic Republic of the Congo.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the forcible return of the complainant to the Democratic Republic of the Congo would constitute a breach by Switzerland of his rights under article 3 of the Convention.

8. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Notes

[a] On 14 July 2006, the complaint was mistakenly brought to the attention of the Permanent Mission of the Democratic Republic of the Congo in Geneva. The mistake was discovered in early December 2006 and immediately corrected.

[b] CAT/C/DRC/CO/1, para. 7.

[c] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, para. 6.

[d] See the Committee's concluding observations on the report submitted by the Democratic Republic of the Congo under the Convention against Torture and other forms of cruel, inhuman and degrading treatment (CAT/C/DRC/CO/1), paras. 6 and 7; and the Human Rights Committee's concluding observations on the report submitted by the State party under the International Covenant on Civil and Political Rights (CCPR/C/COD/CO/3), para. 16.

Communication No. 293/2006

Submitted by:	Mr. J.A.M.O., on his own behalf and on behalf of his wife, Mrs. R.S.N., and his daughter Ms. T.X.M.S. (represented by counsel)
Alleged victims:	The complainants
State party:	Canada
Date of the complaint:	8 May 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 9 May 2008,

Having concluded its consideration of complaint No. 293/2006, submitted on behalf of Mr. J.A.M.O., his wife Mrs. R.S.N., and his daughter Ms. T.X.M.S., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant, Mr. J.A.M.O., a Mexican citizen, resides in Canada and is the subject of an order for expulsion to his country of origin. He submits his complaint also on behalf of his wife, Mrs. R.S.N., and his daughter, Ms. T.X.M.S. He claims that his forced return to Mexico would constitute a violation, by Canada, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 19 May 2006. At the same time, the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Mexico while his complaint was being considered. In response to this request, the State party decided to defer the deportation.

The facts as submitted by the complainants

2.1 In September 1995, the complainant was employed at vehicle pound No. 1 of the Procurator-General's Office (*Procuraduria General de la Justicia*) in Mexico City, where he was in charge of human resources. His two supervisors were Mr. J.C. and Mr. A.B. From the beginning of his employment he noticed there was corruption within the pound. He states that the workers used extortion against vehicle owners with the consent of the supervisors. They "asked for money to return vehicles, for towing, for the sale and purchase of vehicles or parts, for 'quicker' services, for information, and for privileged access to private tow-trucks". He also noticed that there was trading in drugs and weapons, as well as illicit dealings with insurance companies.

2.2 The complainant was threatened by Mr. J.C., who accused him of having reported the above-mentioned facts to the Procurator-General's Office. At one point he called the complainant into his office, where two men beat him up. Owing to this situation the complainant requested a transfer to vehicle pound A in Mexico City in March 1997. Later he was also transferred to other vehicle pounds, always at the instigation of Mr. A.B. In September 1997, Mr. A.B. was murdered. The very next day, the complainant began to receive anonymous death threats over the telephone. Suspecting Mr. J.C., he resigned from his job and moved to Cuautla. His wife stayed in Mexico City to work, but she moved to a different apartment. In July 1999 he again received death threats from Mr. J.C., who accused him of having destroyed his extortion network. The complainant did not dare to report this to the police, since he feared that was the very reason why Mr. A.B. had been murdered. The complainant claims that Mr. O.E.V., the former mayor of Mexico City, was ultimately responsible for the corruption network, and that Mr. O.E.V.'s collaborators are seeking to "eliminate" him and his family in order to protect their boss.

2.3 On 2 August 1999, the complainant left Mexico with his family for Canada, where he filed a request for refugee status on 23 September 1999. On 10 July 2000, the Canadian Immigration and Refugee Board (CISR) rejected the request on the grounds that the complainant had not furnished sufficient evidence of the risk that he faced in Mexico. The complainant submitted an application for authorization of a judicial review before the Federal Court, which was also rejected on 8 November 2000.

2.4 On 14 July 2002, the complainant and his family returned to Mexico, where they received new threats, including threats to his family. The complainant therefore returned to Canada as a tourist, but after October 2003 he was no longer entitled to that status and he remained in the country illegally. His family remained in Mexico. Between December 2002 and April 2003, his son received numerous threats from soldiers and police officers in the State of Hidalgo, who were apparently looking for his father.

2.5 On 2 August 2004, there was a fire at the complainant's apartment, and he suffered serious burns. He remained in hospital for several months. Following this incident, his wife and daughter joined him in Canada.

2.6 On 19 November 2004, the complainant submitted a pre-removal risk assessment (PRRA) application, which was rejected on 7 December 2004. He and his family also submitted a Humanitarian and Compassionate application (H&C) for an immigration visa in March 2005, which was rejected on 4 July 2005. They were therefore requested to present themselves for departure on 5 July 2005, but their removal was postponed in order to allow the complainant to continue medical treatment in Canada.

2.7 In February 2005, based on his health problems, the complainant and his family filed an application for residence on humanitarian grounds, in order to be able to remain in Canada, since the complainant could not receive the necessary medical care in Mexico. This application was rejected on 4 July 2005.

2.8 The complainant submits that his daughter-in-law, Mrs. V.V.J., who had remained in Mexico and had lived in his home even since her husband had left for Canada following the complainant's accident, on numerous occasions between August and November 2004, had been visited by unknown persons who were asking for him and had threatened her with a revolver.

She had also been threatened over the telephone. Some of the unknown persons had been wearing coats that were part of the PGJ (*Procuraduría General de la Justicia*) uniform, and travelled in a car without registration plates. On one occasion the house was broken into. It was because of this that she had left Mexico on 2 December 2004 to apply for refugee status in Canada. On 21 December 2005 she was granted refugee status under the Geneva Convention, even though her case was based entirely on that of the complainant.

2.9 The complainant sent the Committee a copy of the decision in which the Canadian Immigration and Refugee Board of Canada granted Mrs. V.V.J.'s asylum request. The Board took into account the following aspects: "the claimant testified that she tried on two occasions to telephone the police but received no reply and no assistance. The Tribunal gives the claimant the benefit of the doubt regarding this aspect, given that she is a young woman residing alone, who was trying to live her life with no support and minimal resources at her disposal. Thus, in view of all of the evidence submitted to the Tribunal, and the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*, the panel considers that the claimant has met the burden of proof and gives her the benefit of the doubt on certain credibility issues that have been raised."

2.10 In the light of that decision, the complainant submitted new visa exemption applications on humanitarian grounds and a PRRA, which were also rejected on 19 May 2006. Prior to that, on 21 April 2006, the complainants had reported to the Canada border services agency, where they had been told to report to Trudeau Airport on 20 May 2006 in order to leave Canada. On 27 November 2006, the Federal Court rejected an application for a judicial review of the previous PRRA decision.

The complaint

3. The complainants allege that if they were returned to Mexico they would be in grave danger of being subjected to torture and ill-treatment, or even death, in violation of article 3 of the Convention.

State party's observations

4.1 In a note verbale dated 7 March 2007, the State party submitted its comments on the admissibility and, additionally, on the merits of the complaint. The State party contends that the complaint is inadmissible in respect of Mrs. R.S.N. and Ms. T.X.M.S., since they are not subject to an expulsion order from Canada. Their complaint is therefore premature. The complainant's case is also inadmissible; it is manifestly unfounded, given the lack of evidence and the fact that the alleged risks do not fall within the definition contained in article 1 of the Convention. The complaint is therefore incompatible with article 22.

4.2 The State party describes the different remedies invoked by the complainant. With regard to the denial of refugee status, CISR decided that the evidence submitted was insufficient to show that there was a basis for the request. It also noted that the complainant had not sought the protection of the Mexican authorities. The evidence before CISR indicated that State protection was available and would have been effective. According to the complainant's testimony, the Mexican authorities had conducted an investigation into corruption at the vehicle pound after a complaint had been filed by a client, and it had made some arrests following the murder of the complainant's former employer. Indeed, according to the allegations, the Mexican authorities had dismantled the alleged "corruption network". CISR also raised doubts about the existence of a subjective fear, highlighting the complainants' lack of urgency in filing their claims for refugee status after arriving in Canada. Later, they renounced the PRRA, opting instead to leave Canada voluntarily on 14 July 2002, in order to apply for immigration visas from the Delegation of Quebec in Mexico, which they would not have been able to do had they remained in Canada. Their application was denied, however.

4.3 On 19 November 2004, the complainant submitted a PRRA application alleging the same risks of persecution as had been mentioned in his request for refugee status, which had been rejected. The PRRA officer noted firstly that the complainant had not submitted any evidence of the threats which he allegedly had received during his visit to Mexico between 14 July and 16 October 2002. The officer also noted that the complainant's behaviour did not corroborate the existence of such threats, since he had returned to Canada on his own, leaving behind his wife and two children, even though he claimed that the whole family was being targeted by the new threats and that his children and home had been visited and put under surveillance by individuals wishing to do him harm. Furthermore, his family had stayed in Mexico without any apparent difficulties until August 2004, when they had returned to Canada because of the complainant's accident, and not in order to flee from threats or danger in Mexico. The PRRA officer also noted that the complainant's return to Canada on 16 October 2002 did not prove that there was any subjective fear on his part, since he had been planning to return all along, having left all his family belongings in the apartment that he had been renting in Canada since 1999. The PRRA officer further concluded that there was no evidence that the complainant could not benefit from the protection of the Mexican authorities. The complainants had not challenged the rejection of their PRRA application before the Canadian Federal Court.

4.4 Regarding the application filed on humanitarian grounds, the deciding officer noted that it contained no new evidence that would allow him to arrive at a different conclusion from that reached by CISR and the PRRA officer. The complainants had still not provided any evidence to substantiate the alleged risks. The lack of evidence also prompted the deciding officer to reject the allegation based on the state of health of the complainant, since the latter had failed to prove that he would be unable to receive the necessary treatment in Mexico.

4.5 The complainant submitted a second PRRA application on 12 April 2006, in which he argued that his daughter-in-law, Mrs. V.V.J., had obtained refugee status in Canada and that her asylum application was based entirely on his story and testimony. He also alleged, for the first time, that Mr. O.E.V., the former Mayor of Mexico City, was behind the death threats that he had allegedly received in Mexico. The PRRA officer who had rejected his application noted that each request for protection was a specific case and that he was not bound by the conclusions reached by CISR in the daughter-in-law's case. The officer noted that the complainant had not produced all the evidence and documents that had been submitted to CISR in support of the daughter-in-law's asylum application. In particular, he had not provided her personal information form, which would have shown the exact grounds given in her application. CISR had given her the benefit of the doubt, despite certain discrepancies in her statement, on account of the fact that she was a young woman living on her own in Mexico, and in implementation of the "Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution". The PRRA officer further noted that the asylum application of the daughter-in-law was not based exclusively on the complainant's allegations and testimony. His son had also submitted an affidavit in support of the application, in which he mentioned threats and persecution, which were not shown to be linked with the complainant. It was therefore unclear which testimony

CISR had used as a basis for granting the daughter-in-law refugee status. The PRRA officer concluded that the complainant had failed to show a link between the former mayor's legal troubles and the problems that the complainant allegedly had with the managers of the vehicle pounds where he had worked. The officer also noted that the complainant had not raised the issue of the risk before and that the evidence did not support the allegation. The complainants did not challenge the dismissal of their PRRA application before the Federal Court.

4.6 Regarding the second application on humanitarian grounds, the deciding officer noted that the complainant had completed his medical treatment in April 2006 and had declared himself fit for work. Although he claimed that he needed aftercare and access to appropriate medical services, he provided no details as to the aftercare and medical services which he allegedly required. On the issue of the complainants' links with Canada, the PRRA officer noted that the complainants were not financially independent in Canada and that they had provided no evidence of their alleged integration into the community. The deciding officer therefore concluded that, under the circumstances, return to Mexico would not cause the complainants any unusual and unjustified or excessive difficulties.

4.7 The State party maintains that the complaint is incompatible with article 22 of the Convention, since the alleged risks do not constitute torture for the purposes of the Convention. Torture, as defined in article 1, requires that the suffering be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". In the present instance, it has not been shown that the persecuting agent is a public official or is acting in an official capacity. By all accounts Mr. O.E.V. does not perform a public function in Mexico and does not act in an official capacity on behalf of the Mexican authorities. Regarding Mr. O.E.V.'s alleged "collaborators", the complainants have not furnished any evidence to show that those persons are public officials or persons acting in an official capacity. The only "collaborator" that the complainant identified was Mr. J.C., who, according to the complainant, also had problems with the law. However, no information has been provided on his current situation. Given the lack of evidence, or even an allegation, that Mr. O.E.V. and his collaborators were acting in an official capacity, the complaint should be declared inadmissible.

4.8 The complaint is also manifestly groundless, since there is no evidence whatsoever of the existence of the threats and persecution, nor is there any evidence that Mr. O.E.V. is seeking to "eliminate" the complainant and his family or would have any interest in doing so. The complaint is based on mere speculation, which is neither plausible nor rational.

4.9 The State party affirms that the complainant's testimony at the hearing for his daughter-in-law contradicts his allegations before the Committee and before the Canadian authorities in the context of his own complaint. He had alleged that he had received death threats, including against his family, during his three-month stay in the State of Hidalgo from 14 June to 16 October 2002. On 11 October 2005, however, in support of his daughter-in-law's asylum claim, he declared that he had not been the victim of any threats or persecution during that time. Taking this contradiction into account, the State party maintains that the complainant's allegations are not credible. Furthermore, the State party maintains that the complainants failed to show that no domestic remedies were available against Mr. O.E.V.'s alleged collaborators.

4.10 Besides its comments on admissibility, the State party maintains that the complaint should be dismissed on the merits, for the above-mentioned reasons regarding the lack of basic merit.

Complainants' comments

5.1 As regards the admissibility of the communication vis-à-vis the complainant's wife and daughter, counsel asserts that their status is very precarious and that they are liable to be expelled from Canada. The wife and daughter should form an integral part of the complaint because, in addition, they are also in danger as members of the family.

5.2 The complainant also considers that he has submitted sufficient evidence to have the protection of the State party. Concerning Mr. O.E.V., he states that this person enjoys the support of very powerful people in the Mexican Government and that his daughter-in-law was persecuted by men who seemed to be police officers and who resembled the men who had been working in the compound of the Attorney General's Office. As to the State party's observation that Mr. O.E.V. is no longer a public official, the complainant emphasizes that he has been mayor of Mexico City and that he has contacts with powerful public officials in Mexico. Consequently, the complainant and his family are at risk of being tortured by serving public officials and former officials.

5.3 The complainant has always affirmed that in the State of Hildago, where they remained in hiding, he did not receive death threats. However, the threats were received at his home in the Federal District where his parents lived. Contrary to the Government's statement, he did not say that he had not been the victim of threats or persecution during this period, but rather that he had not directly received threats in the State of Hildago.

5.4 The applicant states that he sent a letter to the Mexican consulate saying that there was no hospital in Mexico where he could be treated. A letter of 3 May 2005 from his Canadian doctor stated that he would need further treatment in a specialized rehabilitation unit for about one year. However, that had not been taken into account by the Canadian authorities. It was only after the publication of several press articles about his case that his expulsion was deferred by six months.

5.5 According to the complainant, after his asylum hearing on 6 June 2000, no Canadian agency would listen to his argument. All the proceedings were in writing. In each PRRA application he could have been asked to attend a hearing in order to make his allegations better understood, but he was never invited. Often, the decisions were taken very quickly and without assessment of the evidence. In addition, the same official reached a decision on his first and second humanitarian applications and his second PRRA application. An effective remedy would be the Refugee Appeal Section, which the State party was unwilling to bring into play, despite the fact that it is covered by the new Immigration Act. The Federal Court is an effective remedy, but limited to procedural errors. It does not analyse cases on their merits, and if it decides in favour of applicants the case is referred to the preceding body for a new analysis and decision. The PRRA is not an effective or adequate remedy, and its officials are insensitive to the suffering and risks faced by persons who fear being deported to countries where they may be subjected to torture or cruel treatment or punishment.

5.6 As to the fact that the applicant did not challenge the rejection of his first PRRA application, he states that he could not afford and had no possibility of obtaining legal assistance. Moreover, he did not believe in the effectiveness of such a remedy.

5.7 Concerning the immigrant visa application lodged with the Delegation of Quebec in Mexico in July 2002, the complainant states that he decided to leave for Mexico because the Quebec authorities were unwilling to interview him in Montreal. He gave up the Post-Determination Refugee Claimants in Canada (PDRCC) Class because it was even more difficult to join than the PRRA programme and he was sure that he would be accorded his immigrant visa.

5.8 Contrary to the State party's affirmation, the complainant did not return to Canada three months after his immigration application had been rejected, but only two days after having received a refusal of the application for a review of the initial decision. That shows his fear due to the alleged danger. His family remained in hiding in Mexico. When his sister went to the Attorney General's Office in the Federal District to ask for an attestation of employment which he had to submit to the Canadian authorities, the officials insisted on seeing him and obtaining his address, stating that they had matters to settle with him.

5.9 As to the complainants' links with Canada, he submits copies of a 2004 attestation of employment (Parc Hotel Management), a letter from his employer dated January 2007 (OCE Business Services) and Revenue Canada's Contribution Assessment for 2006. He also submits the temporary work permit issued to his wife, letters attesting to his participation in the research project run by the McGill University physiotherapy and ergonomics school, a certificate of participation in the support group for serious burns victims and a confirmation of his participation in the CHUM hospital's serious burns study.

Comments concerning the complainant's family

6.1 In a letter of 24 May 2007 the complainant states that, when he submitted his case to the Committee, his wife and daughter were awaiting a reply to their application for extension of their visitor status. They were not therefore about to be expelled from Canada. Their applications were approved on 28 February 2007 but only until 15 August 2007. It is clear that they have exhausted all remedies: application for refugee status, two humanitarian applications, three applications to the Federal Court of Canada, a PRRA application, etc. Visitor status is totally precarious and does not guarantee residence in the country. The case of the daughter-in-law demonstrates that the people persecuting the complainant decided to target other members of the family. Consequently, these two people should form part of the complaint before the Committee.

6.2 In a letter of 26 June 2007, the State party replied that the complaint had been submitted in the name of three people. However, the complainant's wife and daughter had never been the subject of a deportation order. The wife and daughter held renewable visitor's visas valid until 15 August 2007. Consequently, the complaint was manifestly premature and inadmissible with respect to them.

Additional submission of the State party

7.1 In a note verbale dated 31 July 2007, the State party reiterates that there is no evidence corroborating the existence of the threats and persecution to which the complainants claim they were subjected in Mexico. None of the documents that they have submitted establishes any link between them and Mr. O.E.V. The complainants have likewise not furnished evidence leading to the conclusion that Mr. O.E.V. or his alleged colleagues meet the requirements of article 1 of the

Convention. According to the complainant's allegations, Mr. O.E.V. is a fugitive from Mexican justice. This is therefore incompatible with the claim that he enjoys the support of the Mexican authorities. Even if he did have such support, the complainants would still have to demonstrate that he instigated or agreed to the alleged persecution. However, no evidence of this kind has ever been presented.

7.2 In addition, Mrs. V.V.J.'s asylum application was not based exclusively on the allegations and testimony of the complainant. Mr. J.A.M.S., the complainant's son and husband of Mrs. V.V.J., had also submitted an affidavit in support of the latter's asylum application. In it he claimed that he had had problems with "four soldiers and two PDJ officials", whose link with the complainants has not been established. It is therefore not clear what testimony led the CISR to grant Mrs. V.V.J. refugee status. Moreover, the fact that the CISR rejected the asylum application by Mrs. V.V.J.'s husband is not without significance.

7.3 As to the threats which the complainant allegedly received during his visit to Mexico in 2002, if they had been genuine he would have mentioned them to CISR in order to justify his alleged fear. However, neither he himself nor his son nor Mrs. V.V.J.'s lawyer informed CISR of the existence of any threat received during that time.

7.4 The complainant has given only one example of "threats" that he allegedly received in Mexico between 14 July and 16 October 2002. He claims that his sister went to his former workplace in order to obtain an attestation of employment and that she was forcefully questioned about him. However, this allegation is not based on any evidence and is not credible since the "unidentified" persons who thus "threatened" the complainant's sister nevertheless gave her the attestation of employment. In addition, the documentary evidence shows that the complainants were not in the State of Hildago during their three-month visit to Mexico in 2002. In various applications to the Canadian authorities, they stated that they had been staying in Cuautla (Morelos) during the period in question, in other words, the very place where they claim to have received death threats.

7.5 As regards the allegation that the PRRA official did not give sufficient weight to the CISR decision in the case of Mrs. V.V.J., the State party reiterates that this is not "evidence" capable of corroborating the complainants' allegations.

7.6 The State party reiterates that the complaint is premature and inadmissible in respect of Mrs. R.S.N. and Ms. T.X.M.S., since they are not the subject of an expulsion order.

7.7 In the same note verbale the State party requested the lifting of the interim measures relating to the complainant, because it has not been established that he would suffer irreparable harm following his deportation to Mexico. In addition, the request for interim measures made on 19 May 2006 only concerned the complainant. If Mrs. R.S.N. and Ms. T.X.M.S. were also covered by the request for interim measures, the State party maintains that this request should be withdrawn in respect of all the complainants for the reason given above.

7.8 The State party maintains that the requests for interim measures are not appropriate in cases, like the present one, which do not reveal any manifest error on the part of the Canadian authorities and which have not been characterized by procedural abuses, bad faith, manifest bias or serious procedural irregularities.

Submission of the complainant

8.1 In a letter of 12 August 2007 counsel asked the Committee to grant interim measures to Mrs. R.S.N. and Ms. T.X.M.S., given the fact that their visitor status would expire on 15 August 2007.[a]

8.2 In a letter of 2 September 2007 the complainant reaffirms that, contrary to the claims of the Canadian Government, the asylum application filed by Mrs. V.V.J. was based mainly on the persecution that he had suffered and which also affected family members. In the asylum application there were no other grounds than the fact that she had been persecuted for reasons having to do with the activities of her father-in-law.

8.3 As to the complainants' address in Mexico in 2002, they reiterate that they were staying in the State of Hidalgo. If that was not clear from some of the forms that they had filled out, it was a question of an involuntary error, owing to the fact that they did not consider it to be their real address.

Issues and proceedings before the Committee

Examination of admissibility

9.1 Before considering a claim contained in a communication, the Committee must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee notes that the State party has raised an objection to admissibility based on the fact that the communication is manifestly unfounded, in its view, given the lack of evidence and the fact that the risk alleged by the complainant does not correspond to the definition in article 1 of the Convention. The complaint would therefore be incompatible with article 22 of the Convention. The Committee is of the opinion, however, that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone. In the absence of any other obstacles to admissibility, the Committee declares the communication admissible with respect to Mr. J.A.M.O.

9.3 The State party also contests admissibility with regard to Mrs. R.S.N. and Ms. T.X.M.S., respectively the wife and daughter of the complainant, on the grounds that they have visitors' status and are not therefore subject to a deportation measure. The Committee takes note, however, of the complainant's contention regarding the precarious nature of visitor's status and it considers that the risk of deportation also exists for the two women. It therefore regards this part of the communication also to be admissible.

Merits of the communication

10.1 The issue before the Committee is whether the forced return of the complainants to Mexico would violate the State party's obligation under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.2 In evaluating the risk of torture, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

10.3 The Committee recalls its general comment No. 1 on implementation of article 3 of the Convention in the context of article 22, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present.

10.4 As to the burden of proof, the Committee also recalls its general comment and its jurisprudence, which establishes that the burden is generally upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

10.5 The Committee takes note of the complainants' arguments, and the evidence provided to substantiate the latter was submitted to different authorities of the State party. In this connection, it also recalls its general comment, which states that considerable weight will be given to findings of fact that are made by organs of the State party; however, the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case. In particular, the Committee must assess the facts and evidence in a given case, once it has been ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, and that domestic courts clearly violated their obligations of impartiality.[b] In the case under consideration, the evidence before the Committee does not show the examination by the State party of the allegations of the complainant to have been marred by any such irregularities.

10.6 In assessing the risk of torture in the case under consideration, the Committee notes the absence of objective evidence pointing to the existence of risk other than the complainant's own account. The fact that at no time did the complainant seek the protection of the Mexican authorities, the inaccuracies regarding the identity of the persons who made the threats of which he complains, the time that has elapsed since the complainant left his job at the vehicle pound and the country, and the fact that his wife and daughter do not appear to have been targeted by such threats, do not allow for a finding that the complainants are the subject of persecution by the Mexican authorities and that they would run a foreseeable, real and personal risk of being tortured if they are expelled to their country of origin.

10.7 With regard to the complainant's argument that the asylum application filed by Mrs. V.V.J. was based mainly on the persecution that he had suffered, the Committee notes that the decision by CISR took account of factors specific to her, including the fact that she was a young woman residing alone who was trying to live her life with no support and minimal resources at her disposal, as well as the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*.

11. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the expulsion of the complainants to Mexico by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] The Committee did not accede to this request. On the other hand, the interim measures benefiting the complainant were maintained.

[b] See the Committee's decision in case No. 282/2005, *S.P.A. v. Canada* (para. 7.6). See also, for example, the Committee's decision in case No. 258/2004, *Dadar v. Canada*, where it states that while it "gives considerable weight to findings of fact made by the organs of the State party, it has the power of free assessment of the facts arising in the circumstances of each case" (para. 8.8).

Communication No. 301/2006

Submitted by:	Z.K. (represented by counsel, Confrere Juristbyrå)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	22 August 2006 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 9 May 2008,

Having concluded its consideration of complaint No. 301/2006, submitted to the Committee against Torture by Z.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is Z.K., an Azeri born in 1961, currently awaiting deportation from Sweden. He claims that his deportation to Azerbaijan would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 22 August 2006 and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Azerbaijan while his complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant lived in the village of Zerrab, working as a lorry driver. A branch of the Azerbaijani People's Party (APP) was set up in the city of Oghuz (40 kms from his home) in 1989 and the complainant became an active member of the party, holding seminars and meetings. In December 1992 the Oghuz department of the Musavat party was established and the complainant received his party membership card on 20 October 1996. He was the vice-chairman of Musavat in the region, recruiting members and organizing demonstrations. He also worked as an electoral adviser. His brother was the chairman of Musavat in the Oghuz region.

2.2 On account of his participation in a demonstration on 12 September 1998 he was arrested and kept in custody for three days. He was beaten badly by military staff and police both during the demonstration and in detention, and sustained injuries on his back and kidneys. When he was finally released, he was in very poor physical and mental condition.

2.3 His brother stood for the general election held on 5 November 2000, and the pre-election campaign led to the complainant and his brother being threatened that they would lose their jobs. On the day of the general election, the complainant acted as an electoral observer, and was arrested by the police. In detention, the police tried to make him falsify the electoral protocol, which he refused to do. They arrested the complainant and he was kept in custody for one day.

2.4 The complainant continued with his political activities and once again worked as an electoral adviser during the general election on 15 October 2003. On that day he was questioned by the local authorities and ordered to go to the chief of police at the local police station in Oghuz. He refused and was arrested from 8:30 a.m. until 4 p.m. In detention he was physically abused by the police. Foreign observers entered the police station and, as a result, the complainant was released. The chief of police told the complainant that he would be dealt with later.

2.5 After his release, he was informed that there was a demonstration in Baku, organized by Musavat, which he decided to attend. He left for Baku the next morning and arrived there at 3.50 p.m., by which time the demonstration had degenerated and the situation was chaotic. The complainant witnessed the beating of a female journalist, and tried to help her. He was as a result beaten very badly by police using truncheons, arrested and brought to the nearest police station. The physical abuse continued and he was beaten and whipped on the soles of his feet. He was released between 9 and 10 p.m. that day, as a Norwegian observer had intervened and also because his injuries could result in internal bleeding. Following his release he was transported to his brother's home in Baku. An ambulance was called and administered first aid as his condition required immediate medical attention. When the ambulance personnel learned that he had participated in a demonstration, they refused to take him to hospital. The complainant's brother then asked a family friend, a doctor, to examine him.

2.6 On 17 October 2003 the complainant left Baku and returned to Oghuz, together with his brother and other party members. At the border between two regions, the mini-bus was stopped by policemen, they were arrested and taken to Oghuz police station. The complainant's brother, nephew and cousin were taken to the court office, while the complainant remained at the station. He was fined 220,000 Manat, and was detained for two days with others, without receiving any food. On 19 October 2003, international observers arrived and the complainant and other party members were released. By order of the authorities the complainant was fired from his job on 20 October 2003, so he decided to go into hiding as he feared for his life.

2.7 During his period of hiding, local police went to his home several times, threatening his wife and children. He received a summons dated 1 March 2004 from the Oahu Police Department and a summons dated 31 August 2004 from the Baku Yasmal Police district, which was sent to his brother's address. The complainant's wife received threats, including one from the governor of the Oghuz region. The complainant therefore decided to leave Azerbaijan on 1 September 2004. He arrived in Sweden with his wife and two children on 4 October 2004, and applied for asylum. After his departure from Azerbaijan, the author received an additional summons dated 30 December 2004.

2.8 After three interviews (the complainant states he struggled to understand the interpreter but was afraid to complain) and written submissions by counsel, on 25 May 2005 the Migration Board rejected his asylum application.

2.9 The complainant appealed to the Aliens Appeals Board, which rejected the appeal on 14 September 2005, supporting the findings of the Migration Board. The expulsion order therefore became effective, and his case was returned to the Migration Board for enforcement.

2.10 He lodged a new application for a residence permit with the Aliens Appeals Board on 23 September 2005. He asserted that he wanted to stay in Sweden until 20 November 2005, when elections were due to be held in Azerbaijan, hoping the country would become democratic. The Aliens Appeals Board rejected the application on 28 September 2005. The complainant left Sweden on 10 October 2005 and travelled to Germany to seek asylum. Pursuant to the Dublin Convention he was returned to Sweden and applied there for asylum again on 5 December 2005. The Migration Board held an interview with the complainant, where he submitted a list of persons in Sweden considered by Musavat in need of protection. The Migration Board rejected his second application on 21 February 2006, and held that the decision should be enforced, as it had already considered the complainant's reasons for seeking asylum and the list did not change its decision. In addition, his kidney condition did not warrant a residence permit on humanitarian grounds.

2.11 On 1 March 2006, he appealed to the Aliens Appeals Board, arguing that other persons on the list had been granted asylum in Sweden and that the Migration Board, in those decisions, had not questioned the credibility of the list. His appeal was rejected on 21 March 2006, as the need for protection had already been considered by the Board. He also applied for permanent residence permit pursuant to the interim legislation then in force (chapter 2, section 5 b of the 1989 Aliens Act). This was rejected on 19 June 2006 by the Migration Board as the complainant had not been in Sweden long enough to qualify for a resident permit pursuant to the interim legislation. On 26 June 2006, the complainant applied for asylum again pursuant to the new legislation entered into force on 31 March 2006 (Aliens Act 2005:716). According to chapter 12, section 19, it is possible for the Migration Board and newly created Migration Courts to re-examine the matter of a residence permit and issue an order staying the enforcement.

2.12 On 29 June 2006, the Migration Board decided not to grant a residence permit as the conditions in the new law were not fulfilled. The Migration Court rejected the appeal on 14 July 2006. The complainant appealed to the Migration Court of Appeal on 21 July 2006, which decided on 28 July 2006 not to grant leave to appeal and, thus, all available domestic remedies were exhausted.

2.13 In April 2005, the complainant participated in a demonstration in Stockholm against the Azeri government. Representatives of the Azeri Embassy took photos of the participants. The complainant's name is mentioned in articles in the Musavat journal and in the Azeri newspaper *Mirze Xezerin*. His participation in that demonstration would make his situation in Azerbaijan more difficult.

The complaint

3. The complainant alleges that his deportation to Azerbaijan would constitute a violation of article 3 of the Convention, as he risks being arrested, torture and killed, in relation to his political activities and his role as an electoral observer during past general elections. It is also possible that he will be considered to be working against the present regime and that he will be regarded as an "enemy of the state".

State party's observations on the admissibility and the merits

4.1 On 19 February 2007, the State party commented on the admissibility and merits of the communication. It sets out the relevant legislation, pointing out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The complainant's case was assessed primarily under the 1989 Aliens Act, including the temporary legislation, but the 2005 Aliens Act was also applied.

4.2 On admissibility, the State party maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention if deported to Azerbaijan fails to rise to the basic level of substantiation required, for purposes of admissibility. Accordingly, the communication should be declared inadmissible as manifestly ill-founded.

4.3 On the merits and as to the general human rights situation in Azerbaijan, the State party submits that Azerbaijan became a party to the Convention Against Torture in 1996 and has made the declaration under article 22. It has been a member of the Council of Europe (CoE) since January 2001 and is a State party to the European Convention on Human Rights and other major international human rights instruments. The CoE has been monitoring the human rights situation in that country, and some progress has been made. However, the State party admits that although positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including arbitrary detentions, beating and torture of individuals in custody, to extract confessions. It concedes that, while it does not wish to underestimate these concerns, they do not in themselves suffice to establish that the return of the complainant would entail a violation of article 3 of the Convention.

4.4 On the interviews conducted by the Migration Board, the State party contends that national authorities are in the best position to assess the information submitted by the complainant and estimate his credibility. As to the quality of the interpretation provide during the interviews, the State party notes that the complainant only contended that the interpretation *might* have affected the outcome of the interview, but that he had no comments on the quality of interpretation at the end of those interviews. The issue of whether or not the complainant was to be considered credible was not decisive in the Board's decision to deny his asylum request.

4.5 The State party explains that following a request by the Government, the Swedish Embassy in Ankara, Turkey, conducted an investigation concerning the political activities of the complainant as well as the authenticity of the documents submitted by him. The investigation confirmed his identity and the fact that he is a member of Musavat. However, information about the exact position he held in that party could not be obtained. The judgement of the court imposing a fine is genuine as well as the summons to appear before the same court. Concerning the summons of 31 August 2004, the investigators concluded that it was forged, as no person named J. Azizov ever worked for the relevant authority Several other formal requirements have not been complied with. On the issue whether the complainant would face torture if returned to Azerbaijan, the Embassy considered the risk of torture to be highly unlikely, as being a member of an opposition party is normally not a problem in Azerbaijan.

4.6 The State party argues that, according to the complainant's submission, he has never been detained for more than three days and his longest period of detention occurred in 1998. It contends that, had the Azerbaijani authorities considered him to be a threat to the regime, they would have kept him in detention for longer periods. In addition, according to reports by the

OSCE and Human Rights Watch, out of 600 individuals detained during the demonstration on 16 October 2003, 125 were sentenced to imprisonment for up to five years. It submits that, in 2005, a presidential pardon was granted in Azerbaijan to all seven opposition leaders arrested and imprisoned in the aftermath of the 2003 elections. It follows that the complainant, whose alleged position in the party was much lower than that of the party leaders, would run no risk of torture.

4.7 As to the summonses invoked by the complainant, the State party contends that the summonses dated 1 March and 30 December 2004 were issued mainly to ensure that the complainant pay the fine imposed on him. With regard to the summons of 31 August 2004, even if it was considered to be genuine, there is nothing to support the complainant's contention that he was called for questioning about the demonstration in October 2003. Additionally, that document would not prove that the complainant is wanted today, particularly in view of the 2005 presidential pardon.

4.8 As to the alleged physical abuse and damage to the complainant's kidneys, the State party argues that there is no evidence to prove that the kidney condition is the result of past abuse or torture. The alleged abuse in 1998 occurred so long ago that it cannot be considered to meet the requirement that a previous instance of torture should have happened in the recent past in order to be pertinent to the risk of being subjected to torture.[a]

Complainant's comments on the State party's observations

5.1 On 3 August 2007, the complainant recalls that his case was not re-examined under the 2005 Aliens Act, although he did invoke new circumstances in accordance with the new legislation. He indicates that reports of the interviews by the Migration Board are quite brief and that they do not reflect all the answers provided by him.

5.2 The complainant states that the risk of torture in Azerbaijan goes beyond mere theory or suspicion and that it must be considered highly probable, in view of prior harassment, severe physical abuse and torture by the Azeri authorities. He contends that there are well founded reasons that he will be persecuted and/or arrested due to his political beliefs if returned to Azerbaijan. He points out to a certificate issued by the Musavat party where it is stated that, should he return to Azerbaijan, he would face "a number of legal measures".[b] He argues that he is still of interest to the Azeri authorities.

5.3 As to the State party's view that there is no general need for protection of asylum-seekers from Azerbaijan, the complainant submits that he has never made such a claim. He questions whether the Swedish migration authorities apply the same kind of test as the Committee when considering an asylum application under the 1989 Aliens Act. According to him, decisions delivered by the Swedish migration authorities with regard to asylum-seekers from Azerbaijan are routine decisions.

5.4 As to the authenticity of the documents submitted by the complainant as evidence, he contends that all are genuine. As regards the summons of 31 August 2004, he refers to a certificate issued by the Musavat party attesting to the fact that a J. Azizov did work at the relevant authority. Moreover, it is not logical for him to submit one piece of forged evidence, when all the rest has been confirmed as genuine. He states that his alleged lack of credibility has affected the outcome of the Migration Board's decision.

5.5 As to the complainant's past torture, reference is made to certificates issued by Danderyd University Hospital on 18 June 2007, where it is stated that, although the origin of some scars in his body cannot be determined, there is nothing to suggest that they could not have occurred as a result of blows with weapons, kicks and falls on hard surfaces. Reference is also made to an expert psychiatric opinion, where it was concluded that the complainant is probably suffering from Post Traumatic Stress Disorder (PTSD).

Additional comments by the parties

6.1 On 15 October 2007, the State party submitted the following additional comments.

6.2 As to the claim that the Swedish migration authorities issue "standard decisions" concerning aliens from Azerbaijan, the State party submits that its domestic authorities first assessed whether the general condition in Azerbaijan would be a sufficient basis for asylum and then made an assessment of the particular circumstances invoked by the complainant.

6.3 As to the authenticity of the August 2004 summons, the State party contends that the statement by the Musavat party concerning J. Azizov cannot be considered to effectively refute the findings of an independent lawyer hired by the Swedish Embassy.

6.4 As to the medical certificates, the State party states that they are new to the case and that they have not previously been presented to or assessed by the Swedish authorities or courts. In its view, the certificates offer weak support for the complainant's claim of past torture as his scars are so discreet and unspecific that it is not possible to say exactly how they were caused. The final conclusion of the forensic expert is that the findings of the physical examination *may* support the complainant's statements concerning physical abuse. Likewise, the psychiatric expert concluded that he *probably* suffers from PTSD.

6.5 On 24 October 2007, the complainant reiterated his previous arguments in additional comments. On the medical certificates, the author does not provide an explanation as to why they were not submitted to the State party previously. He states that it would have been possible for the Swedish migration authorities to arrange for a medical examination when assessing his application.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainant has complied with article 22, paragraph 5 (b).

7.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee considers, however, that the arguments before it raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[c] However, the risk does not have to meet the test of being highly probable,[d] but it must be personal and present.[e] In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[f] Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned; but that it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[g]

8.4 The Committee has noted the claim that Z.K. would be tortured if returned to Azerbaijan, on account of his political activities and beliefs. It also notes that he claims to have been tortured in the past and that, in support of his claims, he provides recent medical reports. These reports, however, were not previously presented before the Migration Board, and the complainant has failed to provide any explanation as to why these reports were not previously presented, nor has he claimed that such an avenue was not available to him. His failures would apparently provide sufficient grounds to reject the reports. In any case, the Committee observes that these medical reports, while attesting to the fact that he is "probably suffering from PTSD", do not conclusively state that he was tortured, stating instead that his scars are "discreet and unspecific", and that no exact statement can be made on how the past injuries occurred. Hence, it cannot be definitely concluded from the medical certificates that the complainant was subject to torture. At the same time, these medical reports cannot be completely disregarded as they state that the scars on the complainant's body could have occurred as a result of torture.[h] Even if the Committee were to accept the claim that the complainant was subjected to torture in the past, the question is whether he *currently* runs a risk of torture if returned to Azerbaijan. It does not necessarily follow that, several years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan in the near future.[i]

8.5 As regards the complainant's past political activities, although it is undisputed that Z.K. was a member of the Musavat party, it is not clear to the Committee that his activities as a party member were of such significance that he would attract the interest of the authorities if returned to Azerbaijan. In addition, the evidence submitted by the complainant does not reveal that he is currently being searched in that country. With respect to his political activities in Sweden, the complainant has not provided any information that he has been involved in Azerbaijani politics from Sweden, outside of the 26 April 2005 protest, so as to attract such interest or experience persecution.

8.6 In light of all the above, the Committee is not persuaded that the complainant would face a real, personal, and foreseeable risk of torture if deported to Azerbaijan and therefore concludes that his removal to that country would not constitute a breach of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainants' removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] The State party refers to communication No. 191/2001, *S.S. v. The Netherlands*, Views adopted on 5 May 2004, para. 6.6.

[b] No information was provided as to the nature of those legal measures.

[c] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, general comment No. 1, para. 6.

[d] Ibid.

[e] Ibid., para. 7.

[f] Communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.

[g] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, general comment No. 1, para. 9.

[h] The certificate dated 18 June 2007 from the Crisis and Trauma Centre states, inter alia, that: "There is nothing to suggest, however, that [the scars] cannot have occurred as a result of blows with weapons, kicks and falls on a hard surface."; "The injury to his left side … may very well have been caused by heavy blows to the area from a blunt instrument …"; and "The findings of the examination can, thus, confirm that he has been subjected to aggravated assault in the manner described by him."

[i] Communication No. 245/2004, *S.S.S. v. Canada*, Views of 16 November 2005 and communication No. 126/1999, *Haad v. Switzerland*, Views of 10 May 2000.

Communication No. 303/2006

Submitted by:	T.A. (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	15 September 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 22 November 2007,

Having concluded its consideration of complaint No. 303/2006, submitted to the Committee against Torture on behalf of T.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is T.A., an Azeri national awaiting deportation from Sweden to Azerbaijan. He claims that his deportation to Azerbaijan would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 9 October 2006, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to Azerbaijan while his case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 24 April 2007, the State party acceded to the Committee's request.

The facts as presented by the complainant

2.1 The complainant is an engineer and became a member of the AXCP (Azerbaijan National Front Party) at age 19. He became head of the young politicians. He is the nephew of S.M., who became the Minister of Internal Affairs of Azerbaijan in 1992. In 1993, a new party came to power and S.M. was arrested and sentenced to 8 years' imprisonment because of his AXCP membership. S.M. managed to escape from Azerbaijan and currently resides in Russia.

2.2 The complainant was arrested and tortured on several occasions since the new government came to power, including during a demonstration. He claims that, although he was told that the reason for his arrest was his criticism of the ruling party, the real reason was his relationship with S.M. On 15 October 2003, he was sent to Baku to observe the presidential elections. Following the elections, riots broke out in the town. The complainant was arrested, together with some other participants, and tortured. He was beaten, insulted and kept in water for over a day. He was released after several days. He claims that the torture inflicted upon him resulted in a kidney condition, which worsened at the beginning of 2004. He submits medical reports issued from a hospital in Sweden, which support his claim that his kidney condition has become chronic and that kidneys could stop functioning at any time, with possible lethal consequences.[a]

2.3 After the incident in Baku, the complainant was constantly persecuted. On one occasion, he was taken to a police station by police officers and was forced to leave his bag outside. He claims that some other police officers subsequently planted a gun in his bag, on which basis he was charged with murder and imprisoned. He escaped from prison on the way to court, having been helped by some friends. With the help of his uncle, he left Azerbaijan for Russia. On 31 March 2005, the Swedish Migration Board rejected his application for asylum. This decision was confirmed by the Aliens Appeals Board on 20 January 2006.

The complaint

3. The complainant claims that his deportation from Sweden to Azerbaijan would constitute a violation of article 3 of the Convention against Torture, as he fears that he will be arrested and exposed to torture as a result of his own political activities, past torture and relationship with his uncle, the ex-Minister of Internal Affairs.

State party's observations on the admissibility and merits

4.1 On 24 April 2007, the State party provided its submissions on the admissibility and the merits. It sets out the relevant provisions of the 1989 Aliens Act (which has since been repealed) pointing out that several provisions reflect the same principle as that set out in article 3, paragraph 1, of the Convention. Thus, the national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum-seekers.
On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal of entry or expulsion order was issued.

4.2 According to the new chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order. Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. The 2005 Act establishes a new order for examination and determination of asylum applications and residence permits. These cases are now normally dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal.

4.3 According to the State party, the Migration Board rejected the complainant's application for asylum on five grounds: firstly, the general situation in Azerbaijan did not in itself constitute grounds for asylum; secondly, the complainant had spent four months after his departure from Azerbaijan in Moscow and Berlin but had failed to apply for asylum at the first safe country he arrived in; thirdly, the AXCP party is an opposition party in Azerbaijan and the Board was not convinced by his assertion that he was a leading party member at age 19; fourthly, the Board did not find it credible that, as claimed by the complainant, his trial for murder was to be held only ten days after his arrest, that he did not know the name of the alleged victim and that he had managed to escape from police custody; fifthly, the Board found that the applicant's health was not such as to grant him a residence permit on humanitarian grounds. The complainant's appeal to the Aliens Appeal Board was rejected on 20 January 2006. The Appeal Board questioned the veracity of his statements concerning his escape from the police and the fact that despite being wanted by the authorities he had managed to leave Azerbaijan. It also referred to the improved human rights situation in Azerbaijan, since its membership of the Council of Europe (CoE) in January 2001 and the view that membership of opposition political parties do not generally involve a threat of reprisals from the authorities unless the individuals concerned are in leading positions. Lastly, the author's health condition was not considered severe enough to constitute grounds for a residence permit on humanitarian grounds.[b]

4.4 The Migration Board decided on its own initiative to examine whether he qualified for a residence permit under the temporary wording of chapter 2, section 5, b of the Aliens Act and appointed counsel to represent him before the Board. On 8 September 2006, it found that there were no new circumstances or arguments made by the complainant and that the arguments submitted mostly concerned the general situation in Azerbaijan. The medical reports demonstrated that he suffered from a chronic disease, but that it was not possible to conclude that this condition was life threatening. It stated that adequate medical care was available in Azerbaijan and that financial problems in obtaining medical care or a lower standard of medical care provided in Azerbaijan than in Sweden does not in itself constitute grounds for a residence permit.

4.5 On 4 December 2006, the complainant filed an application for a stay of the enforcement of the expulsion order, residence permit and re-examination under chapter 12, section 19 of the 2005 Aliens Act. On 27 March 2007, the Migration Board rejected his application, concluding that no new circumstances were invoked by him, that the allegation concerning torture had been addressed and that the situation in Azerbaijan had not deteriorated since the last decision in any decisive way.

4.6 On admissibility, despite the State party's acknowledgment that the complainant has exhausted domestic remedies, it submits that the complaint is inadmissible as manifestly ill-founded, and inadmissible *ratione materiae*, as falling outside the scope of the provisions of the Convention. On the latter argument, it specifically states that the claims relating to the complainant's health condition fall outside the scope of article 3, as according to article 1 of the Convention the definition of torture relates to severe pain and suffering "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

4.7 On the merits, the State party refers to the findings of the domestic authorities and adds the following. As to the general human rights situation in Azerbaijan, it submits that Azerbaijan has been a party to the Convention against Torture since 1996, has made a declaration under article 22 to deal with communications and has ratified several other human rights instruments including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. It has also been a party to the CoE since January 2001 and is a State party to the European Convention on Human Rights. The CoE has been monitoring the human rights situation and it appears that some progress has been made. An example of such has been that a number of persons defined by the CoE as political prisoners have been released by Azerbaijan in recent years. However, the State party admits that although positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including beatings and torture of persons in custody by members of the security forces. It also submits that, while it does not wish to underestimate these concerns, they do not in themselves suffice to establish that the return of the complainant would entail a violation of article 3. The State party also highlights a recent decision by the Committee,[c] in which it took note of the State party's argument that although human rights abuses are still being reported in Azerbaijan, the country has made some progress towards improving its human rights record. In light of this, inter alia, the Committee concluded that the removal of the complainant to Azerbaijan in that case would not constitute a breach of article 3 of the Convention.

4.8 In December 2006, the State party requested the assistance of the Swedish Embassy in Ankara about some of the issues raised in the case. The Embassy had most of the documents submitted to the Committee and also some other documents submitted by the complainant to the national authorities. It hired a lawyer, specializing in human rights, who it had previously engaged. It confirmed that the information concerning the complainant's family and studies was correct, that his identity card and birth certificate were genuine, but that it was not possible to verify the authenticity of his passport or obtain information on whether he left Azerbaijan legally. It affirms that, although he was a member of the AXCP, his status was of a regular member and he was never an assistant to the chairman, Q.H., as alleged by the complainant. However, for a short period, he served as an unofficial body guard to Q.H. It affirms that his uncle was chief of police and later became Minister of the Interior. It also affirms that he spent eight years in prison, but after his release moved of his own free will to Russia. He presently works as a businessman and regularly travels between Azerbaijan and Russia.

4.9 On the authenticity of the documents provided by the complainant, the Embassy reported the following: firstly, regarding a card allegedly certifying his status as an election observer during the election in 2000, G.A., Chairman of the AXCP's General Assembly stated that he cannot recall that any such document had been issued to the complainant. According to the person that takes care of election matters at the party's office, the kind of election observer document presented by the complainant was not issued for the election in 2000. In view of this information, the Embassy concluded that the information was false. Secondly, regarding three documents submitted during the national proceedings (two of which were submitted to the Committee), allegedly signed by G.A., Chairman of the AXCP, the Chairman confirmed that he did sign these documents but cannot verify the information therein, as he only signed these documents having been asked by the complainant's family to do so and because of his close relationship with the complainant's uncle. Thirdly, the Embassy notes that a newspaper article published in "Azaddliq" on 17 February 2005, although confirmed to be genuine, states that the complainant left Azerbaijan because of his health. Fourthly, regarding a statement allegedly signed by F.U. of the World Azerbaijani Congress, F.U. himself stated that it was false. Fifthly, regarding two documents alleged issued by the organization Human Rights in the XXI Century the Embassy reported that both documents are false. Lastly, as to two documents issued by the Azerbaijan Foundation of the Democracy Development and Human Rights Protection, these were also reported to be false.

4.10 According to the State party, the Embassy has been unable to find any information to support the complainant's allegations either that he was summoned by the police in 2003 and 2004, or that his brother was arrested in August 2005 as he claimed to the domestic authorities. The Embassy concludes that the human rights situation in Azerbaijan deteriorated during the autumn of 2006, in particular regarding the freedom of the press. However, it has not affected the opposition's activities in the country. The opposition remains divided in fractions and is not very powerful. There is no reason for the authorities to be interested in the activities of a member of the opposition at a low level. As to his relationship with S.M., the latter himself travels regularly to and from Azerbaijan without any difficulties. According to information obtained from individuals close to the complainant, his sole reason for leaving Azerbaijan was to seek treatment for his kidney problem. The State party's submits that this is confirmed in an article submitted by the complainant, in which the author's own brother confirms that this was the reason for his departure.

4.11 The State party submits that the fact that the complainant has submitted a number of false documents to the Swedish authorities and the Committee raises serious doubts as to his credibility, as well as raising issues regarding the accuracy of the statements he has made in support of his claims of a violation of article 3. Such doubts are also relevant in respect of his allegation that he was tortured previously in Azerbaijan. Even if medical evidence concludes that he has suffered from violence with blunt and sharp instruments, the State party submits that there is no evidence to suggest that this violence was caused by the Azerbaijani authorities or to support the allegation that his kidney problems arose as a result of the torture he was allegedly subjected to while detained in 2003. There is, the State party submits, in fact a medical report from 10 March 2005, which suggests the contrary when stating that there "is no connection between imprisonment or physical abuse and the illness of nefrotic syndrome". The Embassy's investigation also reported that it is highly unlikely that when the complainant tried to leave the country in March 2004 he was arrested on suspicion of murder and illegal possession of drugs and that ten days later while being transported to trial he managed to escape. The State party submits that the author is not wanted by the authorities nor is he under indictment in Azerbaijan.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 The author submits that he stayed in Moscow only until arrangements had been made for his trip to Sweden, and that he only passed through Germany. He was active in the youth section of the political party, which accounts for the responsibility given to him at such a young age. He and his brother preferred to have the police think that the former had left the country due to medical problems, so as not to draw the attention of the authorities to the real reason he fled, i.e. to seek asylum. According to the medical opinions from the Crisis and Trauma Centre, Danderyd Hospital, the complainant's clinical condition is consistent with the circumstances he described, and that his post-traumatic stress disorder and physical illness was caused as a direct result of torture in his home country.

5.2 As to the general human rights situation in Azerbaijan, the complainant states that there are independent sources which describe the current human rights situation as worse than before, particularly with respect to freedom of speech, arbitrary and politically motivated arrests, poor conditions of detention, and torture in police custody.[d] Bearing in mind the systematic oppression of political dissidents and journalists, it was not improbable to the complainant that the individuals referred to in paragraph 4.9 would not wish to be affiliated with documents expressing severe critic against the regime. Some of those individuals contacted had already served long prison sentences and thus have an even greater reason not to let the authorities know about their political activities. As to the lack of documentation of the police's interest in the complainant, the latter concludes that a regime with a notorious record of arbitrary detention and human rights abuses against detainees often purposely fails to register them, to avoid accountability for such violations. The author adds that according to Swedish government's report on the human rights situation in Azerbaijan, political dissidents have on several occasions been convicted to long prison sentences, on charges of fabricated drug crimes.

5.3 In his appeal of 5 June 2007 to the Migration Court, the complainant presented new information, including articles published in Turkish newspapers dated January 2007 where he is cited as the source for information from 2001 implicating a Turkish General in the military training of terrorist groups in Azerbaijan. The complainant stated that the article attracted much attention notably because of the allegation that the group was involved in the assassination of a Turkish journalist.

Further submissions by the State party

6. On 20 August 2007, the State party informed the Committee that on 6 July 2007, the Migration Court in Malmö rejected the author's appeal of 5 June 2007. Regarding the documents submitted by the complainant to the Migration Court (including, inter alia, articles from Turkish newspapers) the Migration Court held that these were not such new circumstances that could constitute grounds for impediments of enforcement. The State party also informed the Committee that the complainant had filed an appeal against the Migration Court's judgement with the Migration Court of Appeal. On 11 September 2007, the State party informed the Committee that on 31 August 2007, the Migration Court of Appeal rejected the complainant's request for leave to appeal, decision which is final.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes the State party's confirmation in its submissions that domestic remedies have been exhausted.

7.2 The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the removal of the complainant to Azerbaijan would violate the State party's obligations under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

8.4 The complainant claims that he will be at risk of torture if returned to Azerbaijan, due to his political activities, previous torture, and the relationship with his uncle, the ex-Minister of Internal Affairs. Regarding his past political activities, while the State party does not contest that the complainant appears to have been a regular member of the AXCP, it does contest that he could be considered a prominent person at risk of torture upon his return to Azerbaijan. With respect to the articles appeared in the Turkish media in January 2007, which the complainant alleges have had the result of increasing interest in him, the Committee observes that these articles refer to information the complainant made public in 2001, and that he has failed to show how this information may put him in danger if he is to return to Azerbaijan.

8.5 As to the possibility of the petitioner suffering torture at the hands of the State upon his return to Azerbaijan, the Committee has taken due note of his claim that he was previously detained and tortured by members of the Azeri police. It further observes that the petitioner provided medical reports attesting to injuries that were consistent with the circumstances described by him. However, the Committee observes that even if the complainant was detained and tortured in Azerbaijan in the past, it does not automatically follow that, four years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan in the near future. Additionally, while the Committee acknowledges that the complainant suffers from a kidney ailment, he has not clearly shown that this condition is the result of previous torture nor that appropriate medical care would be unavailable to him in Azerbaijan.

8.6 Concerning the fears about his relationship with his uncle, it would appear, and this is uncontested, that the later freely travels between the Russian Federation and Azerbaijan without any restriction. Thus, his relationship with S.M. would not appear to have any negative consequences affecting the complainant's return. The Committee notes the State party's statement that the author is neither charged with a crime in Azerbaijan nor subject to an arrest warrant by Azeri authorities. Consequently, it finds that the complainant has not provided evidence in support of his contention that he would run a real risk of arrest upon return.

8.7 The Committee notes that the complainant has provided a number of documents to the domestic authorities and to the Committee, which he claims corroborate his statement of the facts. The Committee recalls that the State party challenges the complainant's credibility and the authenticity of part of the documentation submitted by him, based on the investigations conducted by its embassy in Turkey. It observes that the State party has not challenged the authenticity of the medical certificates submitted by the author. The Committee recalls that according to its general comment No. 1 the author has not satisfied his burden to present an arguable case. The Committee considers that the complainant has failed to validate the authenticity of the documents related to his political activities prior to leaving Azerbaijan.

9. For the abovementioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Azerbaijan.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Azerbaijan would not constitute a breach of article 3 of the Convention.

Notes

[a] See footnote b below.

[b] The Migration Board assessed in this regard the medical certificates provided by the complainant. He submitted that a medical certificate dated 20 January 2005, stated that he had been subjected to blows with blunt and sharp instruments against the back of his hands, trunk, sternum, neck and head. He also presented a medical report, dated 10 March 2005, stating that he suffered from a kidney disorder called "nefrotic syndrome", which is a condition involving too low levels of albumin. It states that his condition may deteriorate if he does not get adequate treatment and that there is a certain long term risk that he might require chronic dialysis treatment.

[c] *A.H. v. Sweden*, communication No. 265/2005, Views adopted on 16 November 2006.

[d] Human Rights Watch Report, January 2007; Amnesty International Report, May 2007; and U.S. State Department Country Situations Reports, March 2007.

Communication No. 309/2006

Submitted by:	R.K. et al. (represented by counsel, Confrere Juristbyrå)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	12 December 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 May 2008,

Having concluded its consideration of complaint No. 309/2006, submitted to the Committee against Torture by R.K. et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainants are R.K., his wife T. O. and their three children, T.K., born on 2 November 1989, T.S., born on 8 February 1992, and S. K., born on 14 February 2005, currently awaiting deportation from Sweden to Azerbaijan. They claim that their deportation would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Confrere Juristbyrå.

1.2 On 13 December 2006, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainants to Azerbaijan while their case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 13 September 2007, the State party acceded to this request.

The facts as submitted by the complainants

2.1 In 1998, R.K. became a member of the Musavat party (opposition party) in Azerbaijan and worked as a journalist for the Yeni Musavat (opposition newspaper). In 1998, he was elected Secretary of the Musavat party in the Fizuli district. He was very active within the party, participated in the organization of meetings and demonstrations and authored the majority of the political articles published in Yeni Musavat. He set up another oppositional newspaper called Reyting, which was well known for criticising the regime.

2.2 Due to his political activities, R.K. was harassed and physically abused on numerous occasions. He was arrested three times (on 10 May 1998, in the Summer of 2001 and in June 2002), and was ill-treated in connection with meetings and demonstrations. During one of his arrests in 1998, he was told by a deputy police commissioner that he had "aggravated" the authorities. In 2001, he was ordered to pay damages for slander, having written an article about a member of the People's Front party.[a] In the same year, he was arrested while interviewing refugees who were living in buildings due to be demolished. He was detained until the same evening. In March 2002, R.K., I.G., who was then the Musavat party leader, and other members of the party were on their way by car to a meeting when they were attacked and physically abused by the police. Having described this incident in an article in his newspaper on 24 March 2002, R.K. was threatened by the police. In June 2002, R.K. was arrested after taking pictures of a woman who was beaten by the police. In May 2003, the offices of the newspaper were raided by unknown persons and "things were thrown" at R.K. Despite complaints to the police, no investigation was carried out and it is believed by the complainants that the authorities sanctioned the raid. In May 2003, R.K. wrote about President Eldar Aliyev's deteriorating health, and immediately thereafter, the authorities announced that the Musavat party and the Yeni Musavat would be shut down.

2.3 In October 2003, presidential elections took place in Azerbaijan. On 15 October, the day before the elections, and on the election day itself, clashes took place between government forces and opposition supporters. Hundreds of Musavat supporters were beaten with rubber truncheons and fists in an unprovoked attacked. The headquarters of the Musavat party were also attacked. The Ambassador of Norway warned the staff that their lives were in danger and invited them to stay in the Norwegian embassy. R.K. stayed there that night. Subsequently, he was asked to testify in a trial against members of the Musavat party who had been charged with the instigation of the street riots. On 16 September 2004, R.K. made a statement during the trial, in which he confirmed that he had encouraged the demonstrators to march. Following this trial, and threats from the authorities, he and his family fled Azerbaijan.

2.4 On 5 October 2004, the complainants arrived in Sweden and applied for asylum. On 13 March 2006, the Migration Board rejected their application, considering that many of the measures taken against R.K. in connection with demonstrations could not be seen as targeting him personally. According to Swedish legislation in force before 31 March 2006, applications for asylum were in the first instance examined by the Migration Board and were then reviewed by the Aliens Appeals Board, which was the final instance (Aliens Act of 1989). After 31 March 2006, the Aliens Act 2005 entered into force, whereby the re-examination of the Migration Board's decisions was transferred from the Aliens Appeals Board to three Migrations Courts. Between 15 November 2005 and 31 March 2006, an Interim Law was in force, under which provisions certain asylum-seekers who were denied asylum obtained a new opportunity to obtain a residence permit. These cases were analysed by the Migration Board and were not subject to appeal. On the complainants' request, their application was reviewed by the Migration Board under the interim law.

2.5 On 4 September 2006, the Board rejected the complainants' application, on the grounds that they could not be considered to have resided for long enough in Sweden. According to the decision itself, no new circumstances emerged which would constitute reasons to grant residence permits under the Aliens Act, and the family had not formed such ties with Sweden through their stay there that they would be entitled to residence permits on those grounds. The complainants consider that the Migration Board examined their case in a routine manner, without giving sufficient attention to the oral interview.

The complaint

3. The complainants claims that if they are forcibly returned to Azerbaijan, they risk being tortured, in violation of article 3 of the Convention, on account of: R.K.'s political activities, as a member of the Musavat Party; his activities as a journalist for the opposition newspaper Yeni Masavat; and the witness statement he is alleged to have made before the Azerbaijani court on 16 September 2004. According to the complainants, it is well-known that the Azerbaijani authorities use torture during interrogations and provide a number of reports to demonstrate their view.

State party's observations on admissibility and merits

4.1 On 13 September 2007, the State party challenged the admissibility and merits of the complaint. It only responds to the claims raised in relation to R.K. It confirms that he has exhausted domestic remedies but argues that the complaint is manifestly ill-founded. On the facts, it submits that the judgements for slander issued against R.K. by the Azeri courts were not criminal convictions but civil actions. It refers to the Committee's jurisprudence[b] that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk. It also refers to the Committee's jurisprudence[c] that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In addition, it is for the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable.[d] It draws the Committee's attention to the fact that several provisions of both the 1989 Aliens Act and the new Aliens Act, which came into force in March 2006, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. It points out that the Swedish authorities therefore apply the same kinds of test as the Committee when examining complaints under the Convention.

4.2 The State party claims that R.K.'s return to Azerbaijan would not entail a violation of article 3 of the Convention. Great weight must be attached to the decisions of the Swedish migration authorities, as they are well placed to assess the information submitted in support of an asylum application and to assess the credibility of an applicant's claims. R.K. failed to substantiate his allegations of past abuse and provided no evidence in support of these allegations - either medical reports or photographs. He merely described the situations in which he was allegedly abused in broad terms and provides no specific details of the events. He failed to demonstrate that any of the alleged assaults were aimed at him personally, and appeared to have taken place in connection with political meetings and demonstrations where mass arrests took place. Although he claims to have been arrested and taken to a police station on three occasions in Azerbaijan, there is no indication that he was subjected to any kind of abuse while detained, despite the fact that the arrests were alleged to have been made in connection with his political activities and work as a journalist. He was never detained for more than a few hours, was never prosecuted for the acts that led to the arrests. The State party deduces that the Azeri authorities must have been less interested in him than he claims if he was only briefly arrested on three occasions.

4.3 The State party further submits that R.K. did not prove that an order for his arrest was in fact issued, and he does not explain why he was never arrested. It refers to the witness statement, which he claims to have given during a court hearing on 16 September 2004 implicating himself in having urged the demonstrators to march on 16 October 2003, but also notes that he was not arrested during these proceedings. He alleges that they planned to "take care of him" in another way. In support of his claim about his witness statement, he invoked a newspaper article in Yeni Musavat that he claims was published on 17 September 2004. According to a report, dated 4 July 2007, of an investigation by a lawyer practicing in Azerbaijan at the request of the Swedish embassy in Ankara, it would appear that R.K. is not mentioned in the judgement of the proceedings referred to in this article. He is neither wanted by the authorities, nor has been convicted of any crime. In any event, the State party submits, as it would appear that in 2005 a pardon was granted to all seven opposition leaders who were sentenced to prison in the aftermath of the 2003 elections and that their previous convictions were quashed, it appears highly unlikely that the authorities would be interested in arresting and pressing charges against him for his alleged activities in connection with those elections.

4.4 In the same report of 4 July 2007, the Swedish embassy in Ankara confirmed that R.K. is a member of the Musavat Party, but that he never held a leading position in the party, and that his political activity was confined to being a journalist for Yeni Musavat. The report also states that, Musavat is an opposition party in constant trouble with the authorities, mainly in relation to election rigging, and journalists critical of the current regime are under constant threat from the authorities, including attacks, abuse and physical violence. However, no such journalists (listed by the lawyer) have left the country. The State party adds that the Musavat party is officially registered and legal and that party membership is not considered to be a criminal offence. It only won five of the 125 seats in the parliamentary elections in November 2005, and thereby lost much of its position as one of the major opposition parties in Azerbaijan. Thus, the State party questions whether the authorities would take a strong interest in the political activities of the Musavat party members.

4.5 With regard to the general situation concerning human rights in Azerbaijan today, the State party points to its membership of the Council of Europe and the fact that Azerbaijan has ratified several major human rights instruments, including the Convention against Torture. It submits that Azerbaijan has made progress in the field of human rights and in this regard refers to the punishment of around 100 police officers for human right abuses in 2006, the establishment of the institution of a national ombudsman and a new action plan for the protection of human rights was announced by President Aliyev in December 2006. The State party submits that it does not wish to underestimate the legitimate concerns that may be expressed with respect to its human rights record and notes reports of human rights abuses, including arbitrary detentions and incidents of beating and torture of persons in custody by the security forces, particularly of prominent activists, and concern for the freedom of the media and the freedom of expression, in particular with respect to journalists. However, it shares the view of the Migration Board that the situation in Azerbaijan at present does not warrant a general need for protection for asylum-seekers from that country.

4.6 The State party acknowledges that the situation for journalists in Azerbaijan is a cause for concern. However, the situation is not such that the mere fact that an asylum seeker is a professional journalist and criticized the current regime in past articles published in Azerbaijan, would suffice to establish a possible violation of article 3. In this regard, it submits that R.K. has not been politically active or had articles published in Azerbaijan since he left the country at the end of September 2004.

Complainants' comments on the State party's observations

5.1 On 10 December 2007, the complainants submit that it was the witness statement R.K. gave on 16 September 2004, which finally "made the authorities want to get rid of him" and the reason the entire family fled the country. R.K. was threatened by employees from the Ministry of Internal Affairs and the Ministry of Security. They had no opportunity to enforce the threats, as there were a lot of people outside the court room when he left. He understood that it would just be a matter of time before the threats would be enforced. The reason he was not arrested for his activities on 15 and 16 October 2003, was because the authorities feared to attract international attention. He was in the headquarters of the newspaper with several international observers during the incident, while those outside were being physically abused or arrested. The authorities had already received a lot of bad press following the incident in question and were only waiting for an appropriate moment to make him "disappear".

5.2 As to the report from the Swedish embassy in Ankara, the complainants highlight the confirmation that R.K. was a member of the Musavat party and worked as a journalist for the affiliated newspaper, the Yeni Musavat. Furthermore, it refers to the fact that, as mentioned in the report, the Musavat party is, "in constant trouble with the authorities", and that journalists critical of the regime are under constant threat from the authorities and suffer attacks, abuse and physical violence. The complainants confirm that R.K. was never convicted of a criminal offence nor "officially" wanted by the authorities. This fact alone however does not take away from the fact that he is considered a threat to the regime. The claimant denies that there are no known cases of other journalists who have left the country, as claimed in the report, and refers to one such journalist who was granted asylum in Sweden. As to the fact that R.K. is not mentioned in the judgement, it is explained that the authorities would not report such a witness statement in an official judgement that would tarnish their reputation. They acknowledge that he was not in a leadership position within the party, but claim that he had been a prominent person within the Yeni Musavat.

5.3 As to the arguments on the broad nature of the descriptions of the abuse allegedly suffered by R.K., the complainants submit that it is difficult for R.K. to recall every detail, and refer to the Committee's jurisprudence that accounts of past torture will contain inconsistencies or be inaccurate but that complete accuracy is seldom expected of victims of torture.[e] They attach a forensic and a psychiatric medical report, dated 22 and 23 of October 2007, respectively, which according to them give a thorough account of the past persecution, harassment and physical abuse to which he was subjected. The forensic report states that the results of the examination can possibly verify his claims of exposure to blunt instruments; the psychiatric report confirms that R.K. suffers from Post Traumatic Stress Disorder (PTSD). According to the complainants, they demonstrate that R.K. has a state of ill-health that is consistent with the information he has given about his persecution. The complainants refer to the Committee's jurisprudence by arguing that the fact that R.K. suffers from PTSD should be taken into account when assessing his case.[f]

5.4 As to the State party's view that there is no general need for protection of asylum-seekers from Azerbaijan, the complainants submit that they have never made such a claim, but rely on their argument that R.K. is currently personally at risk. They question whether the Swedish migration authorities apply the same kind of test as the Committee when considering an application for asylum under the 1989 Aliens Act, as the test applied is one of a "well-founded fear" rather than "substantial grounds" for believing that an applicant would be subjected to torture, as in the Convention. According to the complainants, the current case was examined in a "routine manner", and the Migration Board did not consider the case in a balanced, objective and impartial way.

5.5 As to the general human rights situation in Azerbaijan, the complainants submit that the situation has deteriorated, in particular for journalists. Concern is expressed for the freedom of the media and the freedom of expression and journalists have increasingly been subjected to threats, harassment and physical abuse. False charges of slander are used as intimidation. There has been a dramatic increase in defamation charges brought against journalists by state officials, and eight journalists are currently detained in Azerbaijan today. Those affiliated with the Musavat party are harassed, arrested, detained and beaten, and there have been attempts to close down the Yeni Musavat newspaper by filing multiple lawsuits against it. Sources have also reported unexplained deaths of two opposition supporters. Politically motivated arrests are used by the government to suppress the opposition. It is common that such detainees remain in retrial detention for more than a year after arrest, and non-governmental organisations continue to receive reports of torture, particularly in police lock-ups.[g]

State party's supplementary observations

6.1 On 25 February 2008, the State party submits that its limited reply herewith should not be taken to mean that it accepts the parts of the complainant's observations that it does not address here, and maintains its position stated in its observations of 13 September 2007. As to the medico-legal and psychiatric certificates that have been invoked in support of the complainant, the State party submits that, as this is new documentation it has not been assessed by the Swedish migration authorities. In addition, the complainant has not offered any explanation as to why he did not undergo the examinations in question at an earlier date. It finds that the conclusion in the certificates offers weak support for his claim of past abuse, particularly in light of its conclusion that "repeated external blunt force trauma has been reported which *may be partly* verified by examination. The result of the examination *may possibly* support his report of assault and torture." The State party maintains that the complainant has failed to substantiate his claim about past abuse.

Complainant's supplementary observations

6.2 On 18 April 2008, the complainants provided a supplementary submission, in which they state that it is undisputed that the medical certificates have not been invoked before or assessed by the Swedish migration authorities. They submit that the competence to decide whether or not to conduct a full torture investigation rests with the Migration Board. Even though the Migration Board did not contest the complainant's claim that he had been subjected to serious physical abuse, the issue of whether or no the author had been tortured and the consequences thereof for him were not considered at all. Hence, in the complainant's view, the Swedish authorities held the opinion that the author's experience of past abuse lacked relevance when assessing the complainants need for asylum and protection. The complainants were surprised when they learnt the State party's "new" position on 13 September 2007, that the complainant had failed to substantiate his claim about having been subjected to abuse in the past. It was in order to substantiate his claim that the complainant considered it necessary to undergo a complete torture investigation. Thus, it was the State party's contention that caused the complainant to submit new documents. If the State party had not "revised the assessment made by the domestic authorities", there would have been no reason for the author to invoke new documents before the Committee. The complainant contests the State party's conclusion that the reports in question offer weak support for his claims and sets out the findings of the reports. He also attaches a statement, dated 17 April 2008, from Reporters Without Borders, which refers to him, stating that he was described as far back as 19 December 2001, as a politically active journalist for a party of the opposition in Azerbaijan and supports his asylum claim.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainants have complied with article 22, paragraph 5 (b).

7.4 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. The Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility considerations alone.

7.5 Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The issue before the Committee is whether the complainant's removal to Azerbaijan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

8.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

8.4 The Committee notes the claim that R.K. would be tortured if deported to Azerbaijan on account of his past political activities, his activities as a journalist and a statement he gave before an Azeri court in 2004. It also notes that he claims to have been tortured in the past and in support of his claims has provided recent medical reports which, as highlighted by the State party, were not presented before the Migration Board The Committee observes that, although it is undisputed that R.K. was a member of the Musavat party, he concedes that he was not in a leading position in the party and has failed to adduce evidence about the conduct of any political activity of such significance as would still attract the interest of the Azerbaijani authorities. He has also failed to adduce evidence of his involvement in the demonstrations that accompanied the elections of 2003. He admits that he was not convicted of any charge following these demonstrations, and even if it were accepted, despite lack of evidence in this regard, that he had made a statement during the subsequent trial with respect to his involvement in the demonstrations, he was not arrested as a result thereof and is not wanted by the authorities. Indeed he has never been charged with, nor prosecuted for, any criminal offence in Azerbaijan.

8.5 As to his claims of past torture, the Committee notes, as highlighted by the State party, that R.K. has only provided general information and no specific detailed information on incidents of torture or ill-treatment. It observes that, although he claims to have been arrested on three occasions, he was neither tortured nor ill-treated during these arrests. Even the medical reports, provided late in 2007, are lacking in detail, despite claims to the contrary, and refer to "repeated incidents of violence" in connection with demonstrations and the fact that R.K. was subjected to "threats, assault, and abuse …" While recognising that the results of the forensic report which, of 22 October 2007, "may possibly support his report of assault and torture" and that, the psychiatric report of 23 October 2007, confirms that he suffers from Post Traumatic Stress Disorder (PTSD), the question is whether he *currently* runs a risk of torture if returned to Azerbaijan. It does not automatically follow that, several years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Azerbaijan in the near future.[h]

8.6 In the Committee's view, the complainants have failed to adduce any other tangible evidence to demonstrate that R.K. would face a foreseeable, real and personal risk of being subjected to torture if returned to Azerbaijan. For these reasons, and in light of the fact that the other complainants' case is closely linked to that of R.K., the Committee concludes that the remaining complainants have failed to substantiate their claim that they would also face a foreseeable, real and personal risk of being subjected to torture upon their return to Azerbaijan and therefore concludes that their removal to that country would not constitute a breach of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainants' removal to Azerbaijan by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] On 21 November 2003, R.K. was ordered to pay further damages for slander with respect to allegations of corruption in a school.

[b] Communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3 and communication No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

[c] Communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

[d] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex XI, general comment No. 1 concerning implementation of article 3 of the Convention; communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.4 and communication No. 265/2005, *A.H. v. Sweden*, Views adopted on 16 November 2006, para. 11.6.

[e] Communication No. 39/1996, *Tala v. Sweden*, Views adopted on 15 November 1996.

[f] Communication No. 65/1997, *I.A.O. v. Sweden*, Views adopted on 6 May 1998.

[g] To support his claims he provides the following reports : Reports from the UN Special Rapporteur on Torture in press release on 6 March 2007 "UN rights expert voices concern about press freedom in Azerbaijan"; Information from the Immigration and Refugee Board of Canada, dated 9 March 2007 and 20 February 2007; a Report from Amnesty International, dated 24 January 2007; Human Rights Watch, Crushing Dissent of January 2004, Events of 2006, and World Report 2007; Reporters without boundaries 1 February 2007, 20 July 2007, and 14 November 2007.

[h] Communication No. 245/2004, *S.S.S. v. Canada*, Views of 16 November 2005 and communication No. 126/1999, *Haad v. Switzerland*, Views of 10 May 2000.

Communication No. 311/2007

Submitted by:	M.X. (not represented by counsel)
Alleged victim:	The complainant
State party:	Switzerland
Date of the complaint:	19 January 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 May 2008,

Having concluded its consideration of complaint No. 311/2007, submitted to the Committee against Torture by M.X. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is M.X., a Belarus national born in 1952. He applied for political asylum in Switzerland in 2002; his application was rejected in 2003. He claims that his forced removal to Belarus (or to Ukraine) would constitute a violation, by Switzerland, of his rights under article 3 of the Convention against torture. He is unrepresented.

1.2 When submitting his initial communication, the complainant requested the Committee to ask the State party not to proceed with his removal until his case was being considered. On 30 January 2007, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, decided not to accede to the complainant's request for interim measures of protection.

The facts as presented by the complainant

2.1 The complainant affirms that he was a political activist in Belarus since 1998 and as such he participated in several political demonstrations. He worked for a company that published literature against the regime in place; the materials were printed in the Russian Federation and all payments transited through the company's bank accounts. According to him, from the mid-1998, the authorities started to persecute him, and allegedly a criminal case was opened against him, on an unspecified date, for organization of disorders, anti-State propaganda, discrediting the authority. This case was subsequently closed.

2.2 The complainant claims that in October 1998, the Belarus authorities had issued him with a foreign passport and asked him to leave the country for Ukraine. He refused and continued to participate in demonstrations and to disseminate printed materials. During a picket in Vitebsk on 18 November 1999, he was allegedly arrested by the police and placed in custody; he was released on 8 February 2000. Allegedly, during the initial interrogation, he was beaten by an investigator, as he refused to provide information on his activities. He also suffered from the overcrowding of the detention centre (there were only 10 beds for 20-25 detainees), and was unable to sleep there because the light was permanently kept turned on. His inmates, ordinary criminals, threatened and beat him because he was a political detainee. He also claims that he suffered from a sexual assault[a] by other inmates during his detention. He contends that the inmates had received orders from the police to intimidate him.

2.3 After his release, the complainant moved to Ukraine. In September 2000, he became a member of the Ukrainian party RUKH. In March 2002, he acted as RUKH electoral observer. He allegedly discovered a number of irregularities and informed the party leadership. Shortly afterwards, he was arrested by the police. According to him, the police advised him not to carry out any political activity in Ukraine. He was asked to sign a record in relation to his arrest and a declaration that he did not have complaints against the police. He considered that the record did not reflect the circumstances of arrest and refused to sign it. As a result, he was allegedly threatened and beaten, to the point that he had lost consciousness.

2.4 In July 2002, he was asked by RUKH to investigate the death of an eminent party member (the Mayor of the city of Khmelnitsky). The complainant concluded that it had been a murder. Shortly afterwards, he allegedly received threats to his life by the Security services. Afraid, he left Ukraine on 25 November 2002, arrived in Switzerland on 28 November 2002, and requested political asylum.

2.5 His asylum request was rejected on 14 May 2003 by the Federal Office for the Refugees (ODR). The complainant appealed to the Asylum Review Board (CRA) on 11 June 2003. His appeal was rejected on 15 November 2006. On 21 November 2006, he was ordered to leave the country before 15 January 2007.

2.6 In a subsequent submission, dated 3 April 2007, the complainant explained that he had presented a request for the renunciation of his nationality to the Belarus Embassy in Switzerland.

2.7 On an unspecified date, he appealed to the Federal Administrative Tribunal. On 7 January 2008, the complainant submitted a copy of a decision of the Federal Administrative Tribunal of 28 February 2007, by which the Tribunal refused to examine his appeal as he had not made his submission in an official language of the Swiss Confederation and given that he had not paid the administrative fee (1200 CHF). He claims that he is unable to pay the fee, and that in any case, all similar complaints are dismissed on various grounds, even when the complaints were filed by lawyers.

The complaint

3. The complainant claims that if he is forcibly removed to Belarus (or Ukraine), the State party would violate his rights under article 3 of the Convention against torture.

State party's observations

4.1 The State party presented its observations on 10 July 2007. It notes that on 6 March 2007, the complainant was issued a new passport by the Belarus Embassy in Switzerland. No evidence was presented by the complainant to show that the copies of letters, presented on 3 April 2007, by which he purported to renounce his nationality were ever mailed. There is no information on the outcome of the request, and it is not clear whether Belarus law allows for Belarus nationals to become stateless. In any case, it is unclear how these documents would impact on an eventual risk of torture for the complainant in Belarus.[b]

4.2 The State party recalls that before Swiss asylum authorities, the complainant claimed that he was persecuted in Belarus because of political activities. He also affirmed that when he left Belarus, he followed the recommendation of the local authorities. After his illegal return to Belarus, he allegedly continued his official activities. According to the information in the present communication, the complainant's company functioned as a clearing house for the printing of political materials in Russia and for related financial operations. Having being located by the authorities in April 1999, he allegedly had taken residence in Ukraine in August 2000. The complainant met his future spouse in Ukraine. Later, he was arrested by the police there in relation to his activities as an electoral observer. He faced difficulties with the authorities by allegedly contributing to the clarification of the circumstances of a car accident of 2001, in which the Mayor of Khmelnitsky had died. After having been informed by the Ukrainian Migration Office that his permit to stay had expired, he and his spouse left to Switzerland.

4.3 The State party observes that the complainant never contended before Swiss authorities that he was detained in Belarus. However, in his initial submission in the present communication, he affirms that he was arrested in Vitebsk on 18 November 1999 and was released on 8 February 2000, after the criminal case against him was closed. Allegedly, while in detention, he was ill-treated by other co-detainees. Subsequently, on 25 February 2005, the complainant affirmed that in fact he was humiliated by co-detainees.

4.4 The State party notes that article 3 of the Convention prohibits States parties from extraditing an individual to a State if there are serious grounds to believe that the individual would be at risk of torture. It endorses the grounds adduced by the Asylum Review Board (CRA) and the Federal Office for the Refugees (ODR) substantiating their decisions to reject the complainant's application for asylum and to confirm his expulsion. It also recalls that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal"[c].

4.5 With reference to the Committee's general comment No. 1, the State party contends that the situation in Belarus cannot, per se, constitute a sufficient ground to conclude that the complainant would be at risk of torture. The complainant failed to provide sufficient elements to conclude that he would be exposed to a "foreseeable, real and personal" risk of torture in Belarus. As to the situation in Ukraine, the State party notes that important political changes have occurred after the events invoked by the complainant when claiming that he could face a risk of torture there. The nature of the changes in question is such that the Swiss Federal Council has since qualified Ukraine as "a safe country", for purposes of the Swiss Law on asylum.

4.6 The State party contends that the complainant admitted that in Belarus he had been sentenced to fines on three or four occasions in connection with his political activities. In addition, he claimed that his company's implication in political activities had attracted the attention of the fiscal authorities. The State party notes, however, that the complainant never made any allusion to acts of ill-treatment inflicted on him by Belarus authorities. No such allegations were presented in the complainant's initial submission to the Committee.

4.7 It was only in his submissions of 19 and 25 January 2007, when he affirmed that while detained in Vitebsk, he suffered from degrading and inhuman treatment, without supplying any proof in this regard. At the same time, the fax which according to the complainant confirms his detention in 1999 - 2000, submitted as an annex to the complainant's communication of 19 January 2007, is dated 12 April 2000, but was never submitted to Swiss asylum authorities. The above elements lead the State party to conclude that the complainant's allegations are not credible in respect of his detention and ill-treatment in Belarus.

4.8 The State party further notes that in his asylum claim, the complainant alleged that he was arrested by police in Ukraine when acting as an electoral observer and was detained and ill-treated there from 31 March to 2 April 2002. The State party notes that even if throughout the asylum proceedings, the complainant had stressed the level of gravity of the ill-treatment suffered in Ukraine, it accepts the veracity of his allegations. The ill-treatment was inflicted on the complainant allegedly because he had refused to sign a detention protocol. Thus, according to the State party, the police action constitutes an abuse (of power). But the "real" grounds for the complainant's detention would not result in any risk of the complainant's prosecution on return, let alone acts of torture. According to the State party, these police abuses constitute isolated acts and do not show any systematic persecution of the complainant by the police because of his political activities.

4.9 As to the complainant's political activity in Belarus, the State party notes that in his asylum application, the complainant declared that he had been politically active in Belarus and was fined for his actions. He had continued his activities in Belarus after his departure for Ukraine. These allegations were dully examined by both the CRA and the ODR.

4.10 The State party notes that in his submission, dated 25 January 2007, the complainant added that his company was also implicated in his political activities. This company was allegedly used to order and print propaganda material. However, in his appeal to the CRA, the complainant mentioned that he had had no intention to use the company for the financing of the mentioned printed materials. The State party notes that such activities would have, without doubt, prompted an immediate reaction by the Belarus authorities, such as the revocation of the printing permit, or the engagement of the complainant's criminal liability and his arrest. At the same time, however, the complainant admits that the company, which was closed at the end of 2000, continued to exist after his departure for Ukraine, and that he only learned later that procedures against him were initiated and he was sought in this respect. In addition, the State party notes that the complainant registered with the Belarus Embassy in Ukraine in 2000; this Embassy issued him a passport in 2002, valid until 2006. In these circumstances, the State party concludes that it is not probable that the complainant in fact conducted any opposition political activities in his country of origin.

4.11 The State next recalls that the complainant has claimed that in May 2000, he and his spouse became members of the RUKH. At the same time he submitted a copy of a certificate drawn up in December 2002, according to which he became a party member only in 2002. At the end of March 2002, he allegedly received a letter from the current president of Ukraine, and this incited him to become politically active in Ukraine, and to act inter alia as an electoral observer for the March 2002 elections. According to the State party, in light of the above, it is questionable whether the complainant was politically active in Ukraine.

4.12 On the complainant's general credibility, the State party recalls that as far as the situation in Belarus is concerned, he presented many grounds before the Committee that were not invoked before Swiss asylum authorities, and were not even invoked in his initial submission to the Committee. The only evidentiary material related to his alleged detention is the confirmation that he allegedly received by fax recently. Given the duration of the detention in question, the State party expresses surprise at the fact that the complainant did not produce any other proof in relation to both the detention and its context, in particular concerning the allegedly degrading and inhumane treatment to which he was subjected in detention.

4.13 The State party further notes factual inconsistencies in the complainant's allegations. It notes first, that the complainant affirmed that the Belarus authorities encouraged him to leave the country in 1998. After his departure to Ukraine however, he continued his activities and regularly returned in Belarus. These returns, during more than two years, show, according to the State party, that the complainant was at any risk of persecution in Belarus, contrary to his allegations.

4.14 The State party also notes that the complainant has submitted to the CRA a letter dated 8 November 2001, issued by the Police Department of Vitebsk, according to which the complainant was not sought in Belarus.

4.15 The State party recalls that the complainant has claimed that he was persecuted by Ukrainian Security Services because of his refusal to share the results of his inquiry in relation to the alleged murder of the Mayor of Kmelnitsky. It notes that the complainant has not explained either to the Swiss asylum authorities or in his communication to the Committee why and how he was able to conduct a scientific inquiry on the causes and the results and consequences of the accident. The State party expresses surprise at the fact that, given the time elapsed, the complainant never substantiated his allegations earlier, either by specifying the reasons for his inquiry, by indicating the names and the qualifications of the specialists consulted, or by producing the results of his inquiry. The State party concludes that the complainant's allegations about his persecution by Ukrainian Security forces lack credibility. Finally, the State party notes that RUKH is a party with nationalist orientation. At no point of time did the complainant explain why he became a RUKH member and invested himself actively.

4.16 The State party concludes that thus there are no serious reasons to believe that the complainant would be at risk of torture, concretely and personally, in case of his return to either Belarus or Ukraine. In addition, being a Belarusian national, he does not risk to be expelled to Ukraine.

Complainant's comments on the State party's observations

5.1 By letter of 28 September 2007, the complainant reiterates his previous allegations. He recalls that he requested the Belarus Embassies in Switzerland and Ukraine to renounce Belarus nationality. These requests place him at additional personal and foreseeable risk of danger in case of his return to Belarus.

5.2 He further explains that his first asylum interview in Switzerland was very summary. During his second interview, he wanted to develop his explanations, but he felt unable to describe the circumstances of his detention in Belarus, as he was ashamed by the presence of young women, and was afraid that the facts would become known to other asylum-seekers. In this context, he provides details on his alleged assault in Belarus: after an interrogation, on an unspecified date, he returned very tired to his cell where there were only three of his cellmates. He felt asleep, and woke up because someone was kicking him; he received kicks on the head and lost consciousness. When he came to, one of his cellmates was "humiliating" him. As the author protested, he was kicked further and lost consciousness again. Once he came to, he was lying on the ground. He had blood on his face and pain on his backside. He assumed that the "worst has happened".

5.3 The complainant contends that he explained to Swiss authorities that in Belarus, he had been arrested on several occasions and brought to the police. After a few hours or days, he had been brought before a court and sentenced to fines.

5.4 The complainant challenges the way the State party assesses the existing evidence in support of his allegations. He reiterates that in case of his forced return to Belarus or Ukraine, his rights under article 3 of the Convention would be breached.

State party's further observations and complainant's comments thereon

6.1 On 8 November 2007, the State party presented further comments and reiterated its previous conclusions. It admits that the complainant has effectively submitted a request to be freed from his nationality, but that from the reply of the Belarusian Embassies in Switzerland and Ukraine, however, it appears that his nationality cannot be waived if he did not obtain another nationality (or if no sufficient guarantees to receive another nationality exist).

6.2 The State party reiterates that after his departure to Ukraine, the complainant was regularly returning in Belarus and was not persecuted there. He also presented a certificate issued by the Vitebsk police in 2001, pursuant to which he was not under search warrant in Belarus. In addition, the Belarusian Embassy in Switzerland had issued him a new passport.

6.3 The State party notes that all persons implicated in asylum proceedings in Switzerland are bound by professional secret, what ensure an effective protection of the asylum-seekers' private life. At the same time, asylum-seekers have the responsibility to present all elements that would ground their demand. The State party accepts that the sense of decency might have prevented the complainant from exposing the assault at the beginning of the asylum procedure. According to it this does not explain, however, why he never mentioned to the Swiss asylum authorities that he was detained in Belarus, in 1999-2000, even when he was asked specific questions in this respect.

7.1 The complainant presented additional comments on 16 November 2007. He first notes that the State party's additional observations repeat in fact the State party's initial observations (July 2007).

7.2 He admits that under Belarusian law the grant of a request to renounce from Belarusian nationality requires the existence of another nationality or guarantees that such nationality would be granted. According to him however, this requirement does not apply in his case, as under international human rights law he has the right to individually determine his personal life.

7.3 According to the complainant, although that the State party seems to admit that he was ill-treated and humiliated in Belarus, at the same time it refuses to believe the fact that he was detained there, in spite of the copies of two official documents that confirm this. He adds that he had sent a request to the Medical service of the detention centre in question, as he was treated there in early January 2000. On 4 December 2007, he submitted a copy of the attestation issued by a detention centre No 2 of Vitebsk, dated 4 December 2007, according to which the detention centre informs the complainant that it cannot provide him with any medical record, as detainees' medical records are destroyed after 5 years. The complainant further reiterates his allegations about the poor conditions of detention in the investigation centre and affirms that this description should be considered as sufficient demonstration that he was really detained.

7.4 The complainant insists that he did not address the issue of the assault with the asylum authorities not only because he was ashamed, but also because he was afraid that this would become known by other asylum-seekers and they would neglect, humiliate would subject him to mockeries.

7.5 As to the State party's remark that during his initial interview he omitted to mention that he was detained in Belarus, he explains that he had explained that he was arrested for short periods and was brought to the police. He explains that he had considered that his detention in Belarus for 80 days constituted a short period, and he was in custody (in an investigation detention centre), but not in prison.

Issues and proceedings before the Committee consideration of admissibility

8. Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that it is uncontested that domestic remedies have been exhausted and that the State party does not challenge the admissibility of the communication. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits.

Consideration on the merits

9.1 The issue before the Committee is whether the complainant's removal to Belarus would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

9.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Belarus, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.3 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".[c]

9.4 In the present case, the complainant claimed that he was targeted by the Belarusian authorities after 1998, because of his political activities. He was issued a passport and asked to leave the country. During his detention in 1999-2000, he was allegedly sexually assaulted by his co-detainees, at the police request. The Committee notes that the State party has objected that neither the detention nor the alleged assault in question were ever mentioned by the complainant before the Swiss asylum authorities, but were submitted only in the framework of the present communication to the Committee, and even not in the complainant's initial submission. The Committee notes that the complainant has not presented any evidence in relation to his alleged assault, in particular he has presented no medical certificate in this connection.

9.5 The only element in substantiation of these allegations constitutes an attestation issued by the detention Centre, which however only confirms that the complainant was detained there from 18 November 1999 to 8 February 2000. The Committee further notes that the complainant has submitted an attestation issued by the Vitebsk police to the effect that he is not sought in Belarus. On the issue of the burden of proof, the Committee recalls its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.[d]

9.6 On the basis of all the information submitted, the Committee is of the view that the complainant has not provided sufficient evidence that would allow it to consider that he faces a foreseeable, real and personal risk of being tortured if he is expelled to his country of origin.

9.7 As to the complainant's allegations that he would be at risk of torture in case of his deportation to Ukraine, the Committee has noted the State party's affirmation that given that the complainant is Belarusian national, he could not be expelled to Ukraine, but only to Belarus. In the circumstances, the Committee considers that it does not need to examine this part of the communication.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Belarus would not constitute a breach of article 3 of the Convention by the State party.

Notes

[a] In his initial submission, the complainant only mentioned that while in detention, he was threatened with a sexual assault.

[b] As to the complainant's affirmation that he risks to be expelled in Ukraine, the State party notes that the complainant had lived in Ukraine, where he has relatives and his companion is Ukrainian national. Given that he is Belarusian national only, his eventual expulsion can be made only to that country. The CRA has therefore correctly concluded that the complainant's allegations of the persecutions he suffered in Ukraine to be non pertinent. The State party affirms that notwithstanding, it would demonstrate that the complainant does not risk to be persecuted in Ukraine.

[c] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX, para. 6.

[d] See communications No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

B. Decisions on admissibility

Communication No. 264/2005

Submitted by: A.B.A.O. (represented by counsel)

Alleged victim: The complainant

State party: France

Date of the complaint: 24 January 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 November 2007,

Having concluded its consideration of complaint No. 264/2005, submitted on behalf of A.B.A.O. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant, A.B.A.O., a Tunisian national born on 4 April 1957, was detained in a holding centre in Paris prior to removal when the complaint was submitted. He claims that his forced repatriation to Tunisia would amount to a violation by France of article 3 of the Convention. The complainant is represented by two NGOs, the Centre d'information et de documentation sur la torture (CIDT-Tunisie) and the Collectif de la Communauté Tunisienne en Europe.*

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 25 January 2005, asking the Government to submit information and its comments on admissibility and on the merits of the allegations. At the same time, pursuant to rule 108, paragraph 9, of its rules of procedure, the Committee requested the State party not to deport the complainant to Tunisia while his complaint was being considered. The Committee reiterated this request in a note verbale dated 19 January 2007.

1.3 In its comments dated 25 March 2005, the State party informed the Committee that, by a decision of 4 February 2005, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) had granted the complainant subsidiary protection. On 15 April 2005, pursuant to rule 109, paragraph 3, of its rules of procedure, the Committee decided to consider the issue of admissibility separately from the merits of the complaint.

The facts as presented by the complainant

2.1 On 26 June 2003 an order for escort to the border was issued against the complainant by the prefect of police with a view to his removal to Tunisia. By a decision of 28 June 2003 the Paris Administrative Court revoked the order since it named Tunisia as the destination.

2.2 On 17 January 2005 the complainant was arrested following a routine check and placed in administrative custody with a view to removal to Tunisia. The complainant claims to have been in negotiation with OFPRA at the time of his arrest.

2.3 On 19 January 2005 the prefect of police issued another order for escort to the border. An appeal against this order was rejected by the Paris Administrative Court on 22 January 2005.

The complaint

3.1 The complainant claims that sending him back to Tunisia would constitute a violation of article 3 of the Convention. He points out that he is widely known as an opponent of the Government of Tunisia, which has been pursuing him for many years. Indeed, his wife had been threatened with violence to compel her to divorce him.

3.2 The complainant refers to decision of the Paris Administrative Tribunal 28 June 2003, which notes that he was subjected to pressure and threats by the Tunisian authorities. This decision found that the prefect of police had contravened article 27 of the Order of 2 November 1945, which provides that "no alien may be sent to a country if they prove that their life or freedom would be in danger there or that they would be at risk of treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms". On these grounds, the Court revoked the decision of the police prefect, which named Tunisia as the destination.

3.3 The complainant also points out that, during its consideration, at a public meeting, of Tunisia's second periodic report to the Committee against Torture, the Committee described Tunisia as a country with a "culture of torture".

State party's observations on admissibility

4.1 In its observations of 25 March 2005, the State party challenges the admissibility of the complaint. In respect of the facts of the case, the State party maintains that the complainant has entered France illegally and under various identities on several occasions since 1986. On 19 March 1996, following his third illegal entry, he applied to OFPRA for refugee status but this was denied on 3 December 1999. On 19 February 2001, the Refugees Appeal Board upheld that decision.

4.2 According to the State party, the complainant was taken in for questioning on 24 April 1996 during an operation to break up a counterfeit document ring; the inquiry revealed that he was involved in forged document-trafficking and that he had close links with the radical Islamist movement. On 28 January 1997, the complainant was sentenced to two years in prison, one of them suspended, and a three-year ban on entry to France. He was in prison from 26 April 1996 to 8 February 1997.

4.3 The complainant was again brought in for questioning on 24 June 2003, pursuant to a rogatory commission from the Paris District Court, for criminal conspiracy in connection with a terrorist undertaking. On 17 January 2005, the complainant was again questioned following a check and another order for escort to the border was issued on 19 January 2005. He was put in administrative custody and submitted his complaint to the Committee against Torture on 24 January 2005.

4.4 As regards the complainant's current status in France, the State party notes that he submitted a request for review of his asylum application to OFPRA on 25 January 2005.

4.5 The State party notes that, in its decision of 4 February 2005, OFPRA found that the complainant was not covered by the 1951 Convention relating to the Status of Refugees. OFPRA considered that his activism was driven, not by political motivations but rather by a desire to create the conditions required for subsidiary protection measures and to block his removal.

4.6 OFPRA nevertheless took account of the de facto situation created by the complainant and his activism, whatever the underlying motives, and in the same decision granted him subsidiary protection for one year, renewable, under article 2.II.2 of Act No. 52-893 of 25 July 1952, on the right to asylum, as amended by the Act of 11 December 2003.

4.7 On 11 February 2005, a decision was handed down denying the complainant a residence permit on the grounds that his presence in France constituted a threat to public order. The 19 January order for escort to the border was revoked the same day in light of the changed circumstances, and a fresh order for escort to the border was issued by the prefect of police. At the same time the prefect of police also issued a compulsory residence order since removal to Tunisia was no longer possible in view of the OFPRA decision to grant subsidiary protection.

4.8 That same day the complainant lodged an appeal against the order for escort to the border with the Paris Administrative Court. In its judgement of 4 March 2005, the Administrative Court dismissed the complainant's request for the decision naming the country of destination to be annulled on grounds of the risk entailed in returning to his country of origin. The State party points out that the Court found that the complainant could not be returned to Tunisia by virtue of the subsidiary protection he enjoyed and of the compulsory residence order issued on 11 February 2005.

4.9 The State party emphasizes that, even though the complainant is subject to a removal decision based on the serious public order implications of his behaviour, that decision is now devoid of all legal effect. The State party argues that the subsidiary protection and the compulsory residence order shield the complainant from implementation of any order for his removal to Tunisia.

4.10 The State party explains that, were OFPRA to withdraw subsidiary protection, the complainant would be able to challenge that decision through the Refugees Appeal Board. Any administrative decision to revoke the compulsory residence order may be challenged through the administrative courts.

4.11 The State party cites two decisions of the European Court of Human Rights (Nos. 42216/98 of 14 November 2000 and 65730/01 of 18 January 2005), in which the Court found that the issuance of a compulsory residence order meant that the applicant was no longer in immediate danger of removal. The Court pronounced the applications inadmissible. The State party cites another two similar cases adjudged in the European Court (Nos. 30930/96 of 7 September 1998 and 53470/99 of 10 April 2003) and argues that, mutatis mutandis, the same principles can be applied to the present complaint.

4.12 In the State party's view, therefore, the complainant enjoys strong long-term protection from any risk of treatment that might contravene article 3 of the Convention as a result of the implementation of an expulsion order, and that he consequently cannot claim to be a victim within the meaning of article 22 of the Convention.

Complainant's comments on the State party's observations

5.1 On 10 May 2006, counsel conceded that their client no longer ran any risk of being deported to Tunisia now that he had been granted subsidiary protection. Protection had been granted on 4 February 2005 for one year and would be renewed provided it was not lifted by OFPRA.

5.2 On 7 August 2006, the complainant informed the Committee that he wished to maintain his complaint and on 6 October 2006 submitted comments on the State party's version of the facts. He points out that nowhere does the 28 January 1997 judgement state that he had "close links with the radical Islamist movement", that those allegations are unfounded and that the allegations of "criminal conspiracy in connection with a terrorist undertaking" were not upheld by the Court.

5.3 The complainant argues that the decision of 11 February 2005 to deny him a residence permit was taken on the grounds that his presence in France constituted a threat to public order, yet OFPRA had noted, in its decision of 4 February 2005, that "his links with the radical Islamist movement had been driven, not by political motivations but rather by a desire to create the conditions required for subsidiary protection measures". These points attest to an implicit recognition by the State party that the threat to public order is not a real one and that the State party should therefore not have refused to regularize his administrative status.

5.4 As to the admissibility of the complaint, the complainant argues that the protection granted by France is illusory and that, contrary to the State party's contentions, he runs a real risk of being sent back to Tunisia. Revocation of the compulsory residence order is a mere formality and could be carried out at any time, while an appeal to the Administrative Court against such a decision has no suspensive effect. In addition, even though he has the right to appeal to the Refugees Appeal Board against any OFPRA decision to lift subsidiary protection, such an appeal likewise has no suspensive effect.

5.5 On 9 January 2007, the complainant commented that he is obliged to report to the Saint-Denis Prefecture at regular intervals. This shows that the French authorities are preparing to deport him as soon as the current period of subsidiary protection ends on 4 February 2007.

Additional State party observations

6.1 On 23 March 2007, the State party informed the Committee that the subsidiary protection measures applied in the complainant's case had been enacted by Parliament in December 2003 and entered into force on 1 January 2004. They are in line with the provisions of article L.721-1 of the Code of entry and residence of aliens and the right to asylum, provisions which may be viewed as anticipated implementation of European Council directive 2004/83/EC of 29 April 2004, on the status of refugees and subsidiary forms of protection.

6.2 The State party recalls that this protection is granted by OFPRA, which, subject to oversight by the Refugees Appeal Board, may withdraw protection by formal decision where there is reason to believe that the threats warranting such protection no longer exist. Subsidiary protection gives rise, subject only to the requirements of public order, to automatic issuance of a one-year temporary residence permit, which is renewable as long as the OFPRA protection is in place.

6.3 Thus application of the subsidiary protection regime is not equivalent to an interim measure under rule 108 of the Committee's rules of procedure. On the contrary, the State party says, it is a measure taken after consideration of the merits of an asylum application.

6.4 The State party emphasizes that in the present case it has no information that might lead it to believe that the factors taken into account in granting the complainant subsidiary protection no longer apply. It therefore repeats that the complainant cannot claim the status of victim insofar as he is in no danger of removal from French territory.

Additional comments by the complainant

7.1 On 2 May 2007, the complainant reiterates that the revocation of subsidiary protection is a mere formality. He claims that giving him subsidiary protection did not resolve the question of his residence in France, since the French authorities refused to give him a residence permit on the grounds that his presence allegedly constituted a threat to public order. As a result he is not entitled to work or to receive social benefits. This legal limbo in itself constitutes inhuman treatment.

7.2 In support of his claim the complainant submits two letters from NGOs, one dated 1 July 1999 and the other 25 January 2005, a letter dated 8 January 2007 from the social worker at Hôpitaux de Paris, a letter dated 23 February 2007 certifying that he receives no family allowance, and other documents relating to his social situation. He also submits a copy of his police record.

Issues and proceedings before the Committee

8.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

8.2 The Committee notes the State party's argument that the complainant has been granted subsidiary protection and that the State party has received no information that might lead it to believe that the threats taken into account in granting the complainant subsidiary protection no longer exist. The Committee also notes that, in his comments, the complainant only addresses the possibility of being returned to Tunisia and his current status in France and does not dispute the fact that he has been granted subsidiary protection and that no judicial proceedings have been brought against him.

8.3 Given that the OFPRA decision grants the complainant subsidiary protection, that a compulsory residence order was issued by the prefect of police on 11 February 2005, and that as a result the order for escort to the border issued on the same date is not enforceable, the Committee finds that the complainant does not run any direct risk of expulsion.

8.4 In the circumstances, the Committee considers that the author is in no immediate danger of expulsion and therefore declares the communication inadmissible under article 22, paragraph 2, of the Convention as incompatible with the provisions of article 3 of the Convention.[b]

9. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the State party, the author and his representative.

Notes

[a] The initial complaint was submitted by the Centre d'information et de documentation sur la torture (CIDT-Tunisie). The complainant subsequently informed the Committee that he was also represented by the Collectif de la Communauté Tunisienne en Europe.

[b] See CAT/C/22/D/62/1996, *E.H. v. Hungary*, decision of 11 June 1999, para. 6.2.

Communication No. 304/2006

Submitted by:	L.Z.B., on her own behalf and on behalf of her daughter J.F.Z. (represented by counsel)
Alleged victim:	The complainants
State party:	Canada
Date of the complaint:	6 October 2006

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 November 2007,

Having concluded its consideration of complaint No. 304/2006, submitted on behalf of L.Z.B. and her daughter J.F.Z. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainants, L.Z.B. (the complainant) and her daughter J. (daughter), are Mexican nationals born in 1961 and 1992 respectively. Their application for political asylum in Canada was rejected in 2006. The complainants claim that their forced return to Mexico would expose them to the risk of torture or death. They are represented by counsel.

1.2 On 10 October 2006, the Committee, acting through its Rapporteur for new complaints and interim measures, and under rule 108 of its rules of procedure, refused to act on the complainants' request for the Committee to ask the State party to suspend their return.

The facts as submitted by the complainant

2.1 On 11 September 2002, the complainant's companion was reportedly tortured and killed in Chilpancingo, Mexico, allegedly by the police, while working as a truck driver. The reasons for the killing are not clear to the complainant, but she claims that her partner had access to compromising information about his employer, B., who belonged to a powerful clan and was running in the local elections.

2.2 The complainant states that her companion's killers believe she has in her possession an envelope containing compromising information. She claims to have received anonymous death threats and was obliged to move to Mexico city with her daughter. She says that, in Mexico city, on 12 August 2003, she was accosted by three individuals claiming to be government officials, who insulted her, demanded the envelope and threatened to kill her daughter. She decided to leave the country and the complainants arrived in Canada on 26 November 2003 and applied for asylum there on 22 December 2003.

2.3 On 26 October 2004, the Refugee Protection Division of the Immigration and Refugee Board rejected their application. According to the complainant, this decision was wrong and unfair because the Refugee Protection Division was partial in its consideration of the evidence. The complainants sought leave to apply to the Federal Court for judicial review of the Refugee Protection Division decision; their request was turned down on 10 May 2005. On 15 June 2006, they applied for a Pre-Removal Risk Assessment (PRRA), but their application was denied on 14 August 2004. Meanwhile, on 2 February 2006, they had asked the Canada Border Services Agency (CBSA) to review their situation on humanitarian grounds, at the same time applying for a stay of removal. A stay having been denied on 5 October 2006, the complainants were told they would be sent back to Mexico. Their application for review on humanitarian grounds was rejected by CBSA on 6 December 2006.

2.4 The complainants believe themselves to be the victims of a number of errors on the part of members of the Board (judges), immigration officials, and even their own lawyers, who, they say, did not examine their application properly. Specifically, the tribunal (i.e., the Refugee Protection Division) found inconsistencies with regard to the place of death of the complainant's partner, but the complainant maintains that these were the result of a mistake in translation.[a] In her view this was a significant error, because the original of the death certificate gave Chilpancingo as the place of death. The translator referred to Chimalhuacan, but as the place where her partner's body was sent. The judge had nevertheless decided that the place name provided by the complainant was wrong, which shows, in the complainant's view, that this piece of evidence was evaluated in a manifestly arbitrary fashion. She maintains that the Refugee Protection Division should have verified not only the authenticity of the document but also the translation.

2.5 The judge also had doubts about the correct age of the complainant's companion and did not accept her explanation that the Mexican police had misread the details on his voting card. The judge is also said to have noted that, according to the complainant, B. was running for the office of Governor of Mexico State, whereas, she says, she has always stated that he was running for the office of Governor of Netzhuacoyotl.[b] Thus the Refugee Protection Division had again evaluated the evidence in an arbitrary fashion.

2.6 The complainants provide a copy of their request to the Federal Court for judicial review of the Refugee Protection Division denial of their application. They consider the request to be very brief, that it fails to mention the translation error, and that neither their lawyer at the time nor the judge had taken sufficient time to examine their application.

2.7 The complainants argue that these errors - lack of thorough consideration, mistakes in translation, etc. - were disastrous for them, yet they cannot be blamed for the errors, which were made by others. Furthermore, the B. family is a powerful one and has connections with powerful and corrupt politicians in Mexico. The complainants' lives would thus be in danger there.

The complaint

3. The complainants assert that their forcible return to Mexico would constitute a violation by Canada of their rights under article 3 of the Convention.

State party's observations

4.1 The State party submitted its observations on 17 April 2007. It recalls that the Committee has consistently held that it is not for the Committee to examine the evaluation of the facts and evidence at the national level unless that evaluation was clearly arbitrary or amounted to a denial of justice, or the decision makers had acted in a partial manner, which was not the case here. The State party notes that the communication addresses exactly the same facts as those considered by the Canadian authorities that had concluded that the complainants were not credible.

4.2 The State party provides a detailed description of Canada's asylum procedures. The complainants arrived in Canada on 26 November 2003 as visitors. On 22 December 2003 the complainant informed Citizenship and Immigration Canada (CIC) that she wished to request asylum on behalf of the two of them. On 9 January 2004 her application was sent to the Refugee Protection Division.[c] The Refugee Protection Division hearing was held on 26 October 2004, in the presence of the complainants' lawyer. Their application was rejected on 6 January 2005. The tribunal determined that the complainants were not refugees or persons in need of protection, in light of their application's overall lack of credibility and of their failure to clearly establish that there was a substantial risk to their life or a risk of torture or cruel treatment, or a reasonable possibility of persecution in Mexico.

4.3 The tribunal found the complainant's answers "confused" and there were substantial differences between the claims made in some of the documents before the tribunal and the complainant's testimony. The explanations provided failed to clear up all these conflicting points.

4.4 The tribunal noted that, according to the complainant and the newspapers, her partner had died in Chilpancingo (Guerrero State), but the translation of the death certificate provided gave Chimalhuacan (Mexico State and allegedly the companion's place of residence). In answer, the complainant had said she had identified the body in Chilpancingo. After the hearing she sent the tribunal a document regarding the transfer of the body, but that document did not explain why the death certificate gave Chimalhuacan as the place of death.

4.5 In addition, the complainant had stated on her Personal Information Form (PIF) that she had lived in Mexico since January 2002 whereas, according to the newspapers, her companion lived in Chimalhuacan. When confronted with this point at the hearing, she answered that she had made a mistake. The tribunal points out that corrections and errors of this kind detract from the complainant's credibility.

4.6 According to articles in the press, the complainant's partner had fallen victim to a gang of criminals posing as criminal investigation officers, who had robbed him of everything but his identity papers.[d] The complainant explained that it was a plot designed to cover up the role played by the police. The tribunal accepted the newspapers' version and not the complainant's, given the latter's overall lack of credibility. The tribunal wondered why her alleged pursuers should have waited three months to demand such an important envelope and why, after the complainants had moved house in February 2003, the daughter should have continued to go to the same school.[e] "Such carelessness on a mother's part", the tribunal found, "is not consistent with [the behaviour] of an individual who genuinely fears for the safety of her family."

4.7 The complainant apparently decided as early as August 2003 to flee the country but did so only three months later. The tribunal found this lapse of time excessive, particularly where death threats were hanging over an individual and her family: an individual in such a situation would be expected to leave at the earliest opportunity.

4.8 The complainants asked the Federal Court for leave to apply for judicial review of the Refugee Protection Division decision[f] but that request was turned down on 10 May 2005.

4.9 They then applied for a Pre-Removal Risk Assessment (PRRA) on 15 June 2006, citing the same risks as those cited to the Refugee Protection Division. They argued that even if they settled elsewhere in Mexico they would be tracked down. Furthermore, the fact that they had applied for asylum in Canada would put them in an even more dangerous situation in Mexico.

4.10 The PRRA officer took the view that the situation in Mexico was the same as it had been when the application to the Refugee Protection Division had been rejected.[g] After having studied the asylum application, the other evidence and information on the current situation in Mexico, the officer had concluded on 14 August 2006 that there were no substantial grounds for believing that the complainants would be in danger of being subjected to torture in Mexico or that their lives would be at risk.

4.11 The PRRA officer noted that the rest of the complainants' family were still living in Mexico, even though it would be reasonable to suppose that it would be in their pursuers' interests to turn on their relatives given the alleged contents of the compromising letter.

4.12 On 3 October 2006, faced with the possibility of forcible return to Mexico, the complainants submitted a request for a stay of removal until the Canadian Border Services Agency (CBSA) had made a decision on their application for reconsideration on humanitarian grounds. On 5 October 2006 CBSA refused to grant a stay and on 6 December 2006 rejected the application for reconsideration on humanitarian grounds. The State party explains that, since the complainants had cited risks to their life and safety in Mexico, their application had been assessed by a PRRA officer, that is to say an immigration official with special training in assessing the risks of return.

4.13 The State party points out that the complainants cited the same risks to CBSA as they had in their asylum and PRRA applications. The complainant had also argued that, as a single mother, she would find herself in a very difficult financial situation in Mexico, which would prevent her from applying for permanent resident status (in Canada). CBSA noted that the complainants have relatives in Mexico, while, in terms of the child's best interests, the complainant's daughter, who had been in Canada for three years, had not formed bonds with local people such that being taken away from them would create unwarranted or unreasonable difficulties. Unless otherwise indicated, a child's well-being lies in living with their parents.

4.14 CBSA thoroughly considered all the risks cited by the complainant, and the situation in Mexico. It examined the translation of the death certificate, which gives Chilpancingo as the place of death, unlike the translation provided to the Refugee Protection Division, but decided that it could not credit it with great evidentiary value. In any case, CBSA noted that, even if it accepted the certificate, it did not prove that the killing had been carried out by the police. CBSA was unable to grant an exemption from this requirement on humanitarian grounds.

4.15 The State party further asserts, citing the Committee's case law recognizing the effectiveness of submitting a request for leave and judicial review in conjunction with an application for stay of removal, that the complainants have not exhausted effective domestic remedies. They could have asked the Federal Court for leave to apply for judicial review of the PRRA decision and, at the same time, could have requested a stay of the removal order pending the outcome. They could have submitted the same request for leave to apply for judicial review - again along with an application for a stay - in respect of the CBSA decision not to grant an administrative stay of removal pending consideration of the application on humanitarian grounds. Lastly, they could have requested leave to apply for judicial review of the CBSA denial of their application on humanitarian grounds. Since these remedies have not been exhausted, the communication is inadmissible.

4.16 The State party further argues that the communication is inadmissible because it is manifestly unfounded. The complainants have failed to produce any evidence in support of their claims that they would be in danger of being subjected to torture in Mexico. All the Canadian decision makers found that the complainants generally lacked credibility. As to the CBSA decision, the State party recalls that the Federal Court did not deem it necessary to intervene and denied leave for judicial review of that decision.

4.17 With regard to the present communication, the State party notes that the complainants claimed to be the victims of errors made by the lawyers they themselves retained. The State party recalls that the Committee has held that "alleged errors made by [the complainant's] privately retained lawyer cannot normally be attributed to the State party".[h] In the State party's view, the communication contains no information that might explain the inconsistencies and contradictions noted by the Canadian decision makers.

4.18 The State party notes that, in considering the complainants' case, the Canadian authorities consulted numerous documents on the general situation in Mexico, including the Committee's final comments following its consideration of Mexico's latest periodic report. It appears that torture is still a problem in the Mexican penal system.

4.19 In the State party's view, the fact that the complainants have not shown that there are substantial prima facie grounds to believe that they personally would face a real and foreseeable risk of torture in Mexico renders their complaint inadmissible. They have been unable to demonstrate that the individuals who are looking for them are in fact public officials or persons acting in an official capacity or at the instigation or with the consent or acquiescence of the Mexican authorities, which is a necessary condition for a finding of risk of torture.

4.20 Consequently, the State party considers that the complainants have failed to establish a prima facie violation of article 3 of the Convention and the communication should therefore be declared inadmissible. In the alternative, the State party argues that the communication is unfounded.

Complainants' comments

5.1 The complainants submitted comments on the State party's observations on 17 June 2007. They repeat their previous claims and further argue, in respect of the Committee's competence to evaluate the facts and evidence, that in their case the Canadian authorities' evaluation of the evidence was manifestly arbitrary and resulted in a denial of justice.

5.2 With regard to the State party's observations on their claims to have been the victims of errors made by the lawyers (and interpreters) they had retained, the complainants note that they also complained of errors made by the Canadian decision makers. In particular, the Refugee Protection Division judge had decided that the place of death of the complainant's partner given in the newspapers and in her testimony was different from that given on the death certificate.

5.3 The complainant states that she has indeed exhausted all available effective remedies. She applied for asylum with her daughter and her application was rejected. She requested judicial review of that rejection in the Federal Court; she applied for PRRA and filed on humanitarian grounds. She applied for administrative stays to halt their removal. Now that all those applications have been turned down, she maintains, there are no other remedies available.

5.4 As to the lack of grounds for the communication and the personal risk of persecution, the complainant states that the central piece of evidence in her case, her partner's death certificate, was evaluated in an arbitrary and unfair fashion. That evidence clearly shows that she and her daughter would personally be at direct risk in Mexico.

5.5 The complainants repeat that these errors, which arise from a failure to properly examine the case, adversely affected them, paving the way for their return to a place where they could suffer torture, disappearance or even death.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee must ascertain that the complainant has exhausted all available domestic remedies; this rule does not apply where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that the State party contests the admissibility of the complaint on the grounds that domestic remedies have not been exhausted. The complainants have replied that they did exhaust all effective domestic remedies: they applied for asylum and following the rejection of their application requested judicial review in the Federal Court, which denied their request. They then applied for PRRA and filed for residence on humanitarian grounds, both of which applications were also rejected. Lastly, they applied for administrative stay to halt their removal.

6.4 Firstly, as to the denial of the complainants' request for a review of their case on humanitarian grounds, the Committee recalls[i] that, at its twenty-fifth session, in its final observations on the report of the State party, it considered the question of requests for ministerial stays on humanitarian grounds. It expressed particular concern at the apparent lack of independence of the civil servants deciding on such "appeals", and at the possibility that a person could be expelled while an application for review was under way. It concluded that those considerations could detract from effective protection of the rights covered by article 3, paragraph 1, of the Convention. It observed that, although the right to assistance on humanitarian grounds is a remedy under the law, such assistance is granted by a minister on the basis of purely humanitarian criteria, and not on a legal basis, and is thus ex gratia in nature. The Committee has also observed that when judicial review is granted, the Federal Court returns the file to the body which took the original decision or to another decision-making body and does not itself conduct a review of the case or hand down any decision. The decision depends, rather, on the discretionary authority of a minister and thus of the executive. The Committee adds that, since an appeal on humanitarian grounds is not a remedy that must be exhausted to satisfy the requirement for exhaustion of domestic remedies, the question of an appeal against such a decision does not arise.

6.5 The Committee also recalls its case law[j] to the effect that the principle of exhaustion of domestic remedies requires petitioners to use remedies that are directly related to the risk of torture in the country to which they would be sent, not those that might allow them to remain where they are.

6.6 Secondly, the Committee notes that the complainants have not explained why they did not consider it necessary to ask the Federal Court for leave to apply for judicial review of the negative PRRA decision. The Committee recalls that it has previously found that these remedies are not mere formalities, and the Federal Court may, in appropriate cases, look at the substance of a case.[k] In the present case the complainants have not in fact challenged the effectiveness of this remedy and have not argued that exhaustion of the final remedy would take an unreasonable length of time. The Committee also notes that, even though the complainants believe that the correct version of the complainant's partner's death certificate is a "crucial" piece of evidence in their case, they nevertheless did not bring it to the attention of the judicial authorities. Under the circumstances, the Committee is of the view that the conditions of article 22, paragraph 5 (b), have not been met in this case and that the communication is therefore inadmissible.

6.7 The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors of the communication and to the State party.

Notes

[a] The complainants state that they submitted another death certificate with their request for PRRA.

[b] In this regard, the complainant's counsel states that the complainant's level of education (five years of primary school) prevented her from understanding that a place like Netzhuacoyotl could not have a governor. Counsel provides a newspaper cutting dated 24 December 2002 which states that B. had been nominated as candidate in local elections due to take place in March 2003.

[c] The Refugee Protection Division of the Immigration and Refugee Board (an independent administrative tribunal) holds hearings in order to determine whether a person is a protected person. A protected person is either a refugee within the meaning of the Convention relating to the Status of Refugees or a person in need of protection.

[d] According to these accounts, the complainant's partner had been robbed of his truck complete with load.

[e] The tribunal notes that the complainant admitted this at the hearing.

[f] The State party notes that any legal measure may be subject to judicial review by the Federal Court if leave is granted. The standard applied in granting leave for judicial review on immigration matters is whether there is an arguable case concerning a serious issue.

[g] According to the State party, the only new element was a letter from the complainant's sister stating that she had been told by someone else that people had come to the complainant's former home looking for her. The officer noted that the letter was unsigned, and it was impossible to determine who these people were or what links, if any, they had with the police. There was no mention of the date the alleged incident occurred and the letter had not been produced until June 2006, whereas the complainant was sought since 2002.

[h] *R.S.A.N. v. Canada*, communication No. 284/2006 (21 November 2006), para. 6.4.

[i] See *Falcon Rios v. Canada*, communication No. 133/1999, decision of 23 November 2004, paras. 7.3-7.4.

[j] Communication No. 170/2000, *Anup Roy v. Sweden*, decision of 23 November 2001, para. 7.1.

[k] *T.A. v. Canada*, communication No. 273/2005, decision of 15 May 2006, para. 6.3.

Communication No. 308/2006

Submitted by: K.A. (not represented by counsel)

Alleged victims: The complainant, the complainant's husband, R.A. and their children, A.A. and V.A.

State party: Sweden

Date of complaint: 16 October 2006 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2007,

Having concluded its consideration of complaint No. 308/2006, submitted to the Committee against Torture by K.A. in her name and on behalf of her husband, R.A., and their children, A.A. and V.A., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is K.A., an Azerbaijani national, born in 1978. She submits the complaint in her own name and on behalf of her husband, R.A., an Azerbaijani national, born in 1978, and their children, A.A. and V.A., born in Sweden in 2004 and 2005, respectively. The complainant and her family were awaiting deportation from Sweden to Azerbaijan at the time of submission of the complaint. The complainant is unrepresented.

1.2 It was unclear from the initial submission dated 16 October 2006 what the facts of the case were and whether all domestic remedies have been exhausted. On 17, 19 and 26 October 2006, and on 22 November 2006, the complainant was requested to provide detailed information on the facts of the case, substantiation of the claims and supporting documents. Specifically, the complainant was requested to provide (1) further details and explanations as to what happened in the past in Azerbaijan and what she and her husband would risk if returned there; (2) information about why her husband was mistreated while serving in the military; (3) explanations as to why she thought that R.A. would be mistreated if he was to serve a prison term; (4) copies of any medical reports attesting to R.A.'s mistreatment in the military, warrants, etc.; (5) copies of all decisions by the Swedish migration authorities and any documents related to the deportation date; and (6) confirmation whether the complainant and her family were in hiding at the time of submission of the complaint.

1.3 The complainant replied on 19 and 23 October 2006, and on 17 November 2006. She confirmed that her family was not in hiding and provided partial information on some of the above questions. Information received from the complainant is incorporated into the factual background. Many of the questions reproduced in paragraph 1.2 above, however, remained unanswered. The complainant, inter alia, did not adduce any documentary evidence attesting to R.A.'s mistreatment in the Azerbaijani military.

1.4 No deportation date was provided, as the Swedish authorities have allegedly refused to indicate the exact date, but the complainant claimed that the deportation could happen any time. She does not invoke any specific articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the facts as presented, however, may raise issues under article 3.

1.5 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 24 November 2006, and requested it, under rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant and her family to Azerbaijan while their complaint is under consideration by the Committee. The request was made on the basis of the information contained in the complainant's submissions and could be reviewed at the request of the State party in light of information and comments from the State party and the complainant.

1.6 By submission of 9 May 2007, the State party informed the Committee that following the request by the Special Rapporteur on New Complaints, the Swedish Migration Board decided on 5 December 2006 to stay the enforcement of the expulsion orders against the complainant and her family.

Factual background[a]

2.1 The complainant and her husband are Azerbaijani nationals of Azerbaijani origin, although R.A.'s mother is claimed to be of Armenian ethnicity. R.A. was 10 years old at the time when an armed conflict between Azerbaijan and Armenia broke out. His mother had to leave Azerbaijan, leaving her son behind with his father. R.A. was hidden by his father for a long time and could not go to school. When he was 16 years old, the authorities refused to issue him an Azerbaijani passport. When he attained the age of military duty, he hid for several months in order to avoid being enlisted, as he feared that anything could happen to him while in the Azerbaijani army. On an unspecified date, his whereabouts were established by the Azerbaijani authorities and he was made to serve.

2.2 The couple applied for asylum in Sweden on 8 September 2003, allegedly three days after they arrived. They carried neither travel nor identity documents; no identity documents, or other documents issued by Azerbaijani authorities, were presented to the Swedish asylum authorities. An initial interview was conducted with the complainant and her husband on 15 September 2003. During the interview, R.A. stated, inter alia, that during his military service in July 2001, he was beaten, hit with weapons and tortured due to his mother being Armenian. For this reason, he fled from military service after 65 days. After that, he moved around to different places, never publicly revealed his full name and was in hiding from the authorities for two years. He and the complainant got married in April 2003 and settled down in a village (in Azerbaijan), where he worked on a farm looking after animals. On an unspecified date, his supervisor requested him to register in that village. Fearing that the authorities and people around him would find out about his mixed ethnic background, he did not comply with the request. R.A. claimed that a person with an Armenian mother runs the risk of losing his or her citizenship and, at worst, of being murdered.

2.3 The complainant stated that she had no separate reasons to seek asylum and that she subscribed to her husband's reasons for seeking asylum. During the second interview, she confirmed that R.A. was abused during his military service.

2.4 On 10 October 2003, R.A. was injured in a car accident in Sweden. He suffered, inter alia, a cerebral haemorrhage and a fractured thigh. Initially, he was treated at the hospital in Umea but was later transferred to Sunderby Hospital in Lulea. He was discharged from Sunderby Hospital on 19 December 2003.

2.5 The Migration Board conducted a second interview with the complainant and her husband on 10 February 2004 (a complete asylum investigation). On that occasion, R.A. was using crutches. During the interview, he stated, inter alia, that the car accident caused a cerebral haemorrhage and he had undergone four surgical operations. Since the accident he had suffered memory loss and had difficulties walking and moving his right hand. He remembered having lived in a village, outside Baku, but could not give any details in this regard. He did not remember where he had been registered, where he had gone to school, or the name of his former employer. He had had many problems in Azerbaijan, but did not remember that they were of the character and magnitude that he had described in the first interview. R.A. was unable to provide the interviewer with any detailed information about, for example, his journey to Sweden, or to elaborate on the reasons he had previously given for seeking asylum. The interviewer informed R.A. that he was expected to submit a medical certificate and, if deemed necessary, that a complementary investigation would be conducted at a later date. Concerning his identity, R.A. stated that he had given his passport to the person who brought him to Sweden and was not in possession of any other documents.

2.6 On 12 February 2004, the complainant and her husband were appointed a professional counsel. In a submission of 27 February 2004, counsel confirmed that the reasons for seeking asylum were correctly reproduced in the record of 10 February 2004 and stated, inter alia, that R.A. suffered from double vision and his right hand was partially paralysed as a result of the cerebral haemorrhage. Every month he underwent medical examinations at the neurological clinic at the hospital in Lulea. For the time being, R.A. was to take twenty different tablets a day. In his home country, he would not be able to receive the care his medical condition required. These circumstances constituted humanitarian reasons for granting a residence permit. Moreover, if returned to Azerbaijan, R.A. would be arrested and interrogated for deserting military service.

2.7 The records from the hospital in Lulea, including the hospital discharge records of 19 December 2003, were attached to the counsel's submission. These records described R.A.'s medical condition at the time of his discharge and included a physician's conclusion that that the neuropsychological assessment gave no indication of remaining cognitive disturbance.

2.8 On 11 January 2004, the complainant gave birth to a son, A.A. An application for asylum was lodged on his behalf. His application was considered by the Migration Board jointly with his parents' appeal.

2.9 On 22 July 2004, the Migration Board rejected the family's applications for residence permits, work permits, declarations of refugee status and travel documents and ordered that they be expelled to their country of origin. As to whether the complainant and her family should be regarded as refugees or otherwise in need of protection pursuant to chapter 3, sections 2-3 of the 1989 Aliens Act, the Migration Board noted, inter alia, that Azerbaijan became a member of the Council of Europe in 2001 and the Azerbaijani authorities pledged to initiate a number of legal reforms. There was a truce between Azerbaijan and Armenia since 1994 and the Azerbaijani constitution guarantees the protection of equal rights for all Azerbaijani citizens. There is an Armenian minority residing in the country, mostly comprised of the Armenian-Azerbaijani families. Couples where one of the spouses is of Armenian origin can usually lead ordinary lives in Baku, especially if the woman is of Armenian origin. Acts of discrimination in working life and harassment at schools and workplaces have been reported, but there is no discrimination or persecution sanctioned by the government. Children of mixed marriages have the right to choose, at the age of 16, which ethnic group they wish to belong to.

2.10 Without questioning the incidents of assault that R.A. said he had been subjected to during his military service, the Migration Board found that the general situation in Azerbaijan did not constitute grounds for granting asylum in Sweden. The Migration Board considered that the incidents could not be imputed to the Azerbaijani authorities, but should be viewed as criminal acts performed by certain individuals, and that R.A. had not established a probability that Azerbaijani authorities had lacked the will or the capability to protect him from the alleged assaults. Moreover, the Board noted that refusal to carry out one's military service could, if punishment by imprisonment were imposed, lead to a maximum of seven years' imprisonment. The Migration Board found that refusal to carry out one's military service or deserting military service does not normally constitute grounds for granting a residence permit and that a permit can only be granted if the summoned person risks a disproportionately harsh punishment. Without passing judgement on the truth of the information provided by the complainant and her husband, the Migration Board did not find support for the conclusion that R.A. and his family, if returned to Azerbaijan, would risk persecution or such an unreasonable punishment owing to, inter alia, race and nationality, that they were to be regarded as refugees or otherwise in need of protection. As to whether the complainant's family should be granted a residence permit for humanitarian reasons, the Migration Board found that the family's physical and mental condition was not severe enough to constitute grounds for granting a residence permit.

2.11 Counsel assigned to the complainant and her husband appealed the Migration Board's decision. In support of the appeal, they stated, that the Migration Board has misjudged the general situation in Azerbaijan. If returned to Azerbaijan, R.A. would be arrested and imprisoned due to his refusal to carry out his military service. It is probable that he would die in prison. R.A. still suffers from the after-effects of the car accident, he is easily irritated and it is difficult for the complainant to take care of their son on her own. The Aliens Appeals Board rejected the appeal on 16 May 2005, stating that it shared the conclusions reached by the Migration Board and that the circumstances invoked before it did not entail a different position.

2.12 On 31 July 2005, the complainant gave birth to a daughter, V.A. An application for asylum was lodged on her behalf. The application was rejected by the Migration Board on 8 September 2005 and the Board ordered that she be expelled with her family. The decision was appealed to the Aliens Appeals Board, which rejected the appeal on 25 October 2005.

2.13 The complainant, her husband and their son filed new applications with the Aliens Appeals Board through another counsel. They stated that the prison conditions in Azerbaijan were very poor and acts of torture occurred. R.A. would be sentenced to seven years' imprisonment due to his refusal to carry out his military service. He suffered from a neurological injury which makes it impossible for him to endure a long prison sentence. The family had nowhere to live and no social network in Azerbaijan.

2.14 On 21 September 2005, the Aliens Appeals Board examined the applications pursuant to the 1989 Aliens Act in its wording before the temporary legislation entered into force. The Board rejected the applications, stating that the circumstances invoked had previously been examined in the case and that the family's argumentation before the Board was not sufficient to warrant a different conclusion.

2.15 On 11 April 2006, the Migration Board examined the case on its own initiative for determination in accordance with the temporary legislation concerning aliens. The Migration Board was of the view that although the complainant's family had stayed in Sweden for almost three years and that their children were born and being raised in Sweden, the family could not be considered to have developed such close ties with Sweden that residence permits could be granted exclusively on that ground. Furthermore, the Migration Board noted that it is possible to return people to Azerbaijan employing coercive measures. Moreover, the Migration Board did not find it to be of urgent humanitarian interest to grant residence permits. Against this background, and considering that no new circumstances had come to light in the case, as required by the temporary legislation, the Migration Board concluded that the family could not be granted residence permits under that legislation.

2.16 On 12 July 2006 the complainant's family lodged an application with the Migration Board concerning, inter alia, impediments to enforcement of the expulsion orders and applied for residence permits under chapter 12, section 18 of the New Aliens Act. They stated that A.A. had to go to hospital in December 2005 and June 2006 due to pneumonia, which requited antibiotic treatment, and that his medical condition required a continuous follow-up for two years. The Migration Board rejected the applications on 11 August 2006.

The complaint

3.1 The complainant does not invoke any specific articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Her statements amount, however, to a claim that Sweden would violate article 3 of the Convention in deporting her and her family to Azerbaijan, since there is a real risk that her husband would be subjected to torture. She claims that according to the Azerbaijani Constitution, he would be sentenced to a minimum of 7 years' imprisonment for deserting military service and tortured in detention because he is half Armenian. She additionally claims that prison conditions in Azerbaijan are poor and that torture is commonly practiced. Her husband, who suffered brain haemorrhage and partial paralysis of his hand, would not survive seven years in prison.

3.2 She claims in her own name and on behalf of her children that they would not be able to live in Azerbaijan alone, while her husband was in prison, since the family does not have a place to live, no money for A.A.'s medical treatment and no support. In November 2005, the Swedish government adopted Temporary Aliens Act for families with children who lived in Sweden for long time. In April 2006, the Migration Board concluded that A.A., who at that time was two years and four months old, did not develop close ties to Sweden. The complainant claims that should he had been 3 years old at that time, the family would have been permitted to stay in Sweden. She states that A.A. goes to the Swedish kindergarten, speaks only Swedish language and, in addition, he was diagnosed with asthma in July 2006 and would require regular medical supervision for several years.

The State party's admissibility and merits observations

4.1 On 9 May 2007, the State party acknowledges that the case of the complainant and her husband had been assessed mainly under the old 1989 Aliens Act, which was replaced by the 2005 Aliens Act,[b] and that domestic remedies were exhausted. The State party maintains that the assertion of the complainant and her husband that they are at risk of being treated in a manner that would amount to a breach of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. It accordingly submits that the communication is manifestly unfounded and, thus, inadmissible pursuant to article 22, paragraph 2 of the Convention. On the merits, the State party contends that the communication reveals no violation of the Convention.

4.2 On the merits, the State party refers to the Committee's jurisprudence[c] that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. For a violation of article 3 of the Convention to be established, additional grounds must exist to show that the individual would be personally at risk.

4.3 The State party recalls that Azerbaijan was a party to the Convention against Torture since 1996 and it recognised the competence of the Committee to deal with individual communications. It is also a party to the International Covenant on Civil and Political Rights, Optional Protocol thereto and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Azerbaijan was a member of the Council of Europe since January 2001 and is a State party to the European Convention on Human Rights and Fundamental Freedoms. By becoming a member, Azerbaijan undertook to introduce reforms to strengthen respect for democracy and human rights. The Council of Europe monitored the situation for some time to ensure that progress is being made. The State party lists the following positive developments: (a) a number of persons defined by the Council of Europe as political prisoners have been released by Azerbaijan in a series of presidential pardons during 2004 and 2005; (b) according to the Azerbaijani Department of Internal Affairs and human rights observers, in 2005 criminal proceedings were initiated and disciplinary measures taken against policemen and other government officials found guilty of human rights violations;[d] (c) initiatives are being taken to train police officers and other government representatives with the support of the OSCE and other organisations; (d) in 2002 Azerbaijan established an Ombudsman's office and (d) the same year, torture was defined as a crime in the new Criminal Code and carries a punishment of seven to ten years' imprisonment.

4.4 The State party concedes that although positive results have been achieved, Azerbaijan is still reported as committing numerous human rights abuses, including arbitrary detentions, beating and torture of persons in custody committed by members of the security forces. Corruption is widespread.[e]

4.5 The State party refers to the 2005 US Department of State report, according to which some of the approximately 20.000 persons of Armenian ethnicity living in Azerbaijan have complained of discrimination and Azerbaijani citizens of Armenian ethnicity often choose to hide their ethnicity by having their ethnic designation changed in their passports.[f] According to a survey conducted in 2003 by UNHCR Implementing Partner, the treatment of ethnic Armenians varies from community to community. Reports of discrimination are frequent and include access to government jobs, payment of pensions and other social benefits, and more generally problems with the authorities when claiming one's rights. Discrimination in the workplace is also common.[g] The UNHCR concludes that while discrimination against ethnic Armenians is not a proclaimed official policy in Azerbaijan, there is clearly a certain amount of discrimination against them in daily life that is tolerated by the authorities. According to the UNHCR, however, such discrimination is not such as to amount to persecution per se, but in individual cases it is possible that the cumulative effect amounts to it.[h]

4.6 Regarding the issue of discrimination, the State party points out that Azerbaijan has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and made a declaration recognising the Committee's competence to receive communications under article 14 of the Convention. Azerbaijan has also ratified the framework Convention for the Protection of National Minorities. The Advisory Committee noted that Azerbaijan made commendable efforts in opening up the personal scope of application of the Framework Convention to a wide range of minorities; however, the Nagorno-Karabakh conflict between Azerbaijan and Armenia and its consequences have considerably hampered the efforts to implement the Framework Convention.[i] Azerbaijan has enacted new legislation containing anti-discrimination provisions, including the Criminal Code and the Criminal Procedure Code.

4.7 The State party concludes by agreeing with the Swedish migration authorities in that the current situation in Azerbaijan does not appear to be such that a general need exists to protect asylum-seekers from Azerbaijan. It highlights that this conclusion applies whether or not R.A. is regarded as being half Armenian owing to his mother's ethnic origin.

4.8 As to the personal risk of torture, the State party underlines the complainant's assertion before the national authorities that she had no separate reasons for seeking asylum and, therefore, subscribed to her husband's reasons for seeking asylum. The State party also draws the Committee's attention to the fact that several provisions of the 1989 Aliens Act and the new Aliens Act reflect the same principle that is laid down in article 3, paragraph 1, of the Convention. It refers to the Committee's jurisprudence[j] that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In addition, the complainant must present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable. Therefore, it is for the complainant to collect and present evidence in support of his or her account of events.[k]

4.9 The State party contends that due weight trust be attached to the opinions of the Swedish migration authorities, as expressed in their decisions to refuse the residence permits in Sweden for the complainant and her family. Furthermore, it considers that the Migration Board's decision of 22 July 2004 - to which the Aliens Appeals Board refers in its decision of 16 May 2005 - is nuanced and well motivated.

4.10 The State party submits that the main issue at stake before the Committee is the complainant and her husband's claim that their forced return to Azerbaijan would put them at risk of being arrested and subjected to torture by the Azerbaijani authorities on the account of R.A.'s refusal to carry out or desertion from military service. According to the State party, in assessing whether there are substantial grounds for believing that they face a real risk of being subjected to treatment contrary to article 3 of the Convention, the credibility that can be attached to their statements is significant. Although the Migration Board and the Aliens Appeals Board in their decisions did not deal with the question of credibility of the complainant and her husband, this does not mean that their statements are altogether undisputed. The State party maintains that there are several circumstances that give reason to question their allegations of ill-treatment.

4.11 The State party firstly notes that R.A.'s statements concerning past harassment and ill-treatment are vague and lacking in details. During his first interview at the Migration Board, he stated that he was beaten, hit with weapons and tortured during his military service in 2001, but gave no further details about these incidents. In addition, R.A. has not adduced any evidence in support of his statements of past ill-treatment although it would have been possible for him to obtain a medical certificate from a doctor alter having deserted military service. Furthermore, R.A. has not submitted any documents, for example a detention order, supporting his statement that he would be of particular interest to the authorities and would be sent to prison if returned to Azerbaijan. No explanation has been given for the lack of evidence. The State party also emphasises that the complainant and her husband have not submitted any identity documents to the Swedish migration authorities. Thus, it cannot be excluded that the family carry a different name and that R.A. is of a different ethnic background than stated before the national migration authorities.

4.12 The State party submits that in January 2007 it requested the assistance of the Norwegian Embassy in Baku, Azerbaijan, in providing information about the punishment for deserting military service in Azerbaijan. The Embassy responded that there were two different punishments for this crime: up to four years' imprisonment (section 321.1 of the Criminal Code) and between tree and six years' imprisonment (section 321.2 of the Criminal Code) respectively. According to legal sources, a prison found guilty of this crime would as a general rule receive a conditional sentence. If the crime has been committed repetitively, the person in question may be sentenced to prison term. The State party notes that the complainant and her husband stated that R.A. escaped from military service on one occasion, in July 2001, and that this incident occurred almost six years ago. Against this background, the State party finds it most unlikely that R.A., if condemned at all upon return to Azerbaijan, would be sentenced to prison term due to his refusal to carry out his military service.

4.13 In this context, the State party draws the Committee's attention to the fact that before the Committee the complainant argued that R.A. would be sentenced to prison for "minimum seven years" upon return to Azerbaijan. At the same time, the submission to the Migration Board does not contain any statements at all about R.A. running the risk of being sentenced to prison if returned to Azerbaijan. In their application to the Aliens Appeals Board, the complainant and her husband stated, for the first tune, that R.A. would be sentenced to seven years' imprisonment due to his refusal to carry out his military service. However, the statement before the Committee that he would be sentenced to prison for "*minimum* seven years"[1] is not to be found in the case files of the national authorities. This example of a recently added piece of information, in the State party's view, calls into question the complainant and her husband's credibility in this matter. It also indicates that their story of the possible consequences of R.A.'s refusal to carry out his military service has escalated during the course of the asylum investigation as well as before the Committee. This gives rise to further doubts concerning the complainant and her husband's general credibility.

4.14 As to the question of the complainant and her husband's behaviour before the national authorities, the State party submits that during the second interview at the Migration Board, R.A. stated that he had suffered memory loss as a result of the car accident. For this reason, he was unable to give any details with regard to, for example, where he had lived, where he had gone to school and where he had worked in Azerbaijan. He remembered having had many problems in Azerbaijan, but not that they were of the character and magnitude that he had described during the first interview. The investigator tried to obtain more information but R.A. was unable to provide any details about, for example, his journey to Sweden, or to explain in more depth the reasons he had previously given for seeking asylum. The only document submitted to corroborate R.A.'s injuries, i.e., the hospital record of 19 December 2003, does not support that he suffered from memory loss after being discharged from the hospital (paragraph 2.7 above). None of the submissions the Migration Board or the Aliens Appeals Board contain any arguments about R.A.'s memory loss as a result of the injuries caused by the car accident and he has not submitted a medical certificate in this respect. In the State party's view, R.A.'s behaviour before the Migration Board indicates that it should not be excluded that he has consciously obstructed and rendered the asylum investigation more difficult. His behaviour gives rise to doubts as to the truth of his statements and claims before the Swedish migration authorities and before the Committee.

4.15 The State party submits that there is no evidence to support that R.A. was beaten and tortured during military service on account of his ethnic origin or for any other reason. Furthermore, there is no evidence to support the conclusion that, if returned to Azerbaijan, he would be sentenced to long-term imprisonment for having deserted military service and that he will be mistreated in prison due to his ethnic origin or for any other reason. Against this background, the complainant and her husband have not substantiated that R.A. would attract any particular attention from the Azerbaijani authorities upon return to his country of origin. Accordingly, the State party maintains that they have not shown substantial grounds for believing that they will run a real and personal risk of being subjected to treatment contrary to article 3 if deported to Azerbaijan.

4.16 To conclude, the State party is of the view that the evidence and circumstances invoked by the complainant and her husband do not suffice to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Given Azerbaijan's participation in the Convention against Torture and the fact that in the past the Committee has taken note of the State party's argument that Azerbaijan has made some progress to improve the human rights situation since it joined the Council of Europe, enforcement of the expulsion orders would not constitute a violation of article 3 of the Convention. In so far as the complainant and her husband's claims under article 3 fail to rise to the basic level of substantiation, the communication should be declared inadmissible for being manifestly unfounded.

4.17 The complainant and her husband do not seem to claim that an enforcement of the expulsion orders would entail a violation of article 16 of the Convention due to R.A.'s medical condition. However, the State party adds that, in its opinion, the case does not reveal any violation of the Convention in this regard.

The complainant's comments on the State party's observations

5.1 On 11 July 2007, the complainant reiterates the events that lead to her and her husband's departure from Azerbaijan. She adds that R.A. was wanted by military authorities and that he could not ask for asylum in the Russian Federation because of the bilateral extradition agreement between Azerbaijan and the Russian Federation. She restates that her husband fears to be killed if returned to Azerbaijan, since "many boys die" while in the Azerbaijani military, hundreds of them are being beaten up and tortured. Some have escaped to Armenia.

5.2 The complainant confirms that she did not have separate reasons to seek asylum when she arrived in Sweden with her husband in 2003 but submits that she does have reasons to seek asylum now after having lived in Sweden for four years. She has two children born in Sweden, who started going to Swedish kindergarten in November 2005 and December 2006, respectively, and who are well integrated into the Swedish society. She challenges the conclusion of the Migration Board of 11 April 2006 that her son, who was two years and four months old at that time, did not develop close ties to Sweden and questions how one could come to such a conclusion without knowing her family and children. She submits that she has a copy of a decision in which a permanent residence permit was granted to another family from Azerbaijan only because of their three years old child born in Sweden.

5.3 On the facts, the complainant adds that she was also in the car accident of 10 October 2003 which resulted in numerous injuries of her husband. Although during the second interview with the Migration Board R.A. could not provide any detailed information about his reasons for seeking asylum, she answered to the interviewer's question on his journey to Sweden. She confirms that as a result of the car accident, her husband suffered from the memory loss and abnormal speech. He had difficulties in thinking, attention deficit, frustration and mood swing. After the accident, he acted like a child and it seemed that all his past experiences were simply erased from his memory. He "woke up as a new person and started living an absolutely new life". On 17 March 2006, R.A. was diagnosed by a local physician with Post Traumatic Stress Disorder.

5.4 The complainant challenges the State party's assertion that her husband could have "consciously obstructed and rendered the asylum investigation more difficult", as, according to her, it was clear to the migration authorities that they were interviewing a sick person. She further refutes the State party's argument that it was possible for R.A. to obtain a medical certificate from a doctor alter having deserted military service (paragraph 4.11 above). She submits, specifically, that in order to get such certificate, he should have explained where and under what circumstances he had received the injuries in question, which, in turn, would have prompted the doctors to call for police.

5.5 Finally, the complainant submits that Azerbaijan's membership in the Council of Europe does not mean that it is a democratic country. She refers to a number of the OSCE, PACE, Amnesty International and Radda Barnen publications,[iii] and adds that there are currently ninety thousand of Azerbaijani asylum-seekers in Europe. She concludes by stating that she is not a lawyer to name specific violations of the Convention by the State party but she is certain that her family cannot return to Azerbaijan.

Supplementary submission from the State party

6.1 By submission of 3 September 2007, the State party recalls that the main task before the Committee is to establish whether R.A. would be personally at risk of being subjected to torture on return to Azerbaijan on account of having deserted from military service. It submits that the complainant and her husband did not adduce any new circumstances or evidence in this regard. Accordingly, the issue of whether the Migration Board's decision not to grant applications for residence permits in Sweden to the complainant's family under the temporary legislation on aliens - which were based on their having young children - would constitute a violation of the Convention, is irrelevant for the proceedings before the Committee. In addition, the State party contends that the complainant's statement that many young men are murdered and tortured during military service is a general and unconfirmed observation.

6.2 The State party adheres to its previous statements and conclusions regarding the human rights situation in Azerbaijan and R.A.'s medical condition. It further notes that no medical certificates were submitted in the present case.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes the State party's confirmation, in the submission of 9 May 2007, that all domestic remedies have been exhausted.

7.2 The Committee recalls that for a claim to be admissible under article 22 of the Convention and rule 107 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility. It notes that the complainant has provided no documentary evidence in support of her account of events in Azerbaijan prior to her and R.A.'s departure for Sweden. Specifically, she claimed that in July 2001 her husband was beaten and tortured during military service in the Azerbaijani military due to his mother being Armenian. However, beyond the mere claim, she and R.A. have failed to provide any detailed account of these incidents or any medical evidence which would corroborate this claim, including a proof of possible after-effects of such ill-treatment. Even assuming that R.A. was ill-treated in July 2001 during his military service, this did not occur in the recent past.

7.3 The Committee also notes that the main reason given by the complainant and her husband for his alleged ill-treatment in the Azerbaijani military and difficulties in living in the Azerbaijani society was his half Armenian ethnic origin. Neither proof of R.A.'s mixed ethnic origin nor any other identity documents was presented, however, by the complainant and her husband to the State party's migration authorities and the Committee. Equally, there is no proof that R.A. was or is wanted for having deserted military service or for any other reason.

7.4 The Committee takes note of the complainant's argument, contested by the State party's authorities, that her husband suffered memory loss as a result of the car accident in October 2003 and, therefore, could not give any details of what happened to him in Azerbaijan. In this regard, the Committee observes that R.A.'s initial interview with the Migration Board took place on 15 September 2003, that is, before the car accident, and thus he had a possibility to give a more detailed account of his past experience and to present at least some of the documentary evidence in support of his claims. Moreover, the Committee was not provided with any medical evidence confirming that R.A. suffered from memory loss; such medical evidence was not presented to the Swedish migration authorities even when the complainant and her husband were assisted by a professional counsel. Furthermore, the complainant, who married R.A. in Azerbaijan in April 2003, also had a possibility to obtain a copy of her and her husband's documents proving their identity and/or ethnic background.

7.5 Lastly, the Committee notes that the Swedish Migration Board gave the complainant and her family ample opportunity to substantiate their claims, by interviewing them several times, examining their case on its own initiative for determination in accordance with temporary legislation concerning aliens and examining the family's application concerning impediments to enforcement of the expulsion orders. The Committee observes that the complainant has not provided fresh evidence which would cast doubts on the findings of, or the factual evaluation made by, the Migration Board and the Aliens Appeals Board.

8. The Committee therefore considers that the complainant's claims fail to rise to the basic level of substantiation required for purposes of admissibility, and concludes, in accordance with article 22 of the Convention and rule 107 (b) of its rules of procedure, that the communication is manifestly unfounded and thus inadmissible.[e]

9. The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the complainant.

Notes

[a] As the facts were unclearly described by the complainant, the factual background in the present complaint was reconstructed mainly on the basis of the decisions of the Swedish authorities.

[b] 2005 Aliens Act entered into force on 31 March 2006. Between 15 November 2005 and 31 March 2006, the 1989 Aliens Act with certain temporary amendments remained in force.

[c] Reference is made to *S.L. v. Sweden*, communication No. 150/1999, Views adopted on 11 May 2001, para. 6.3 and *E.J.V.M. v. Sweden*, communication No. 213/2002, Views adopted on 14 November 2003, para. 8.3.

[d] Reference is made to the 2005 US Department of State report, "Azerbaijan, Country Reports on Human Rights Practices".

[e] Reference is made to the 2006 Report on Human Rights 2006 issued by the Swedish Ministry of Foreign Affaire, the 2006 US Department of State Country Reports on Human Rights Practices 2006 and the 2006 Amnesty International Annual Report 2006.

[f] See footnote d above.

[g] UNHCR, "International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees", September 2003, para. 117.

[h] Ibid, para. 124.

[i] ACFC/INF/OP/I(2004)001.

[j] *S.M.R. and M.M.R. v. Sweden*, communication No. 103/1998, decision adopted on 5 May 1999, para. 9.7.

[k] *A.H. v. Sweden*, communication No. 265/2005, decision adopted on 16 November 2006, para. 11.6.

[l] Italics added by the State party.

[m] OSCE Representative on Freedom of the Media: "I am shocked by arrest of two more Azerbaijani Journalists", PACE: "Human Rights and Democratic Principles Abused in Azerbaijan".

[n] See, for example, *H.I.A. v. Sweden*, communication No. 216/2002, decision adopted on 2 May 2003, para. 6.2; *H.S.V. v. Sweden*, communication No. 229/2003, decision adopted on 12 May 2004, para. 8.3; *R.T. v. Germany*, communication No. 242/2003, decision adopted on 24 November 2005, para. 7.